H.R. 1796, H.R. 2341, AND DRAFT LEGISLATION ON THE OPERATION OF THE BOARD OF VETERANS' APPEALS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION, PENSION AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

OCTOBER 13, 1993

Printed for the use of the Committee on Veterans' Affairs

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October 13, 1993

MATERIAL SUBMITTED FOR THE RECORD

H.R. 1796, H.R. 2341, AND DRAFT LEGISLATION ON THE OPERATION OF THE BOARD OF VETERANS' APPEALS

WEDNESDAY, OCTOBER 13, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION,
AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 334, Cannon House Office Building, Hon. Jim Slattery (chairman of the subcommittee), presiding. Present: Representatives Slattery, Edwards of Texas, Evans, Tejeda, Bilirakis, Stearns, and Montgomery (ex officio).

OPENING STATEMENT OF CHAIRMAN SLATTERY

Mr. SLATTERY. Good morning, ladies and gentlemen. The subcommittee will come to order.

We are meeting this morning to hear testimony from several organizations on pending legislation and draft legislative proposals which cover a rather diverse group of subjects.

First and foremost, we will be hearing testimony on H.R. 2341, which would provide a 3 percent cost-of-living adjustment in the rates of disability compensation and dependency and indemnity compensation, effective December 1, 1993.

I want to make two comments about this bill. First, although the bill, as introduced, does not provide for an increase in the rates of DIC for the so-called group of "grandfathered" beneficiaries, it is my intention to offer an amendment when the bill is marked up to provide for a COLA for this group that is consistent with the agreement the House reached with the Senate on budget reconciliation.

Second, in the coming days the official pronouncement of the change in the Consumer Price Index for the 12-month period ending in September will be made. When that announcement is made, we will know whether we will need to modify the percentage of the COLA. It is possible that the CPI change will be less than 3 percent or more than 3 percent. As always, we intend to enact a COLA which meets that provided for Social Security.

The second bill on our agenda is H.R. 1796, which would increase the special Medal of Honor pension from $200 per month to $500. We are honored to have with us, hopefully some time today, a very distinguished member of our full committee and a former member

of this subcommittee, the Honorable Floyd Spence of South Carolina, who is the sponsor of this bill. I hope Floyd will be able to join us here later on.

Our third area of discussion today concerns draft legislation transmitted to the Congress by the Secretary of Veterans Affairs which would make several changes in the operation of the VA Board of Veterans' Appeals. Many of the proposals are aimed at rectifying some of the timeliness problems we have observed at the Board level.

This is an area that we have focused on all year. Solutions to the problems seen at the Board are not simple, nor are they without controversy. I introduced similar legislation earlier this year, but decided we needed further input from the VA and the veterans' organizations before going forward. This is a highly sensitive area, and I believe we must act with caution. Today we will get further information from the VA and veterans advocates as to the types of changes we ought to be considering. I look forward to learning the views of the veterans groups on this draft, and I fully expect to incorporate their views into new legislation I intend to sponsor.

As a footnote to the matter of legislation affecting the appeals and adjudication processes, I have tentatively scheduled a hearing for mid-November that will highlight new legislation I am now preparing to target some of the areas we have heard testimony on, and which reflects the recommendations we have received from the veterans' service organizations. Hopefully, we can also learn more from the VA about the work of the Secretary's blue ribbon panel on its recommendations for changes in the adjudication process.

The final area for discussion today concerns the bar to reinstatement of unmarried surviving spouses that was raised by the Omnibus Budget Reconciliation Act of 1990. As I have indicated on several occasions, I believe the Congress imposed an overly harsh restriction on surviving spouses when it permanently barred these individuals from being reinstated to any benefits eligibility. I am seeking an equitable solution to this problem, and that is why I asked each witness to comment on three concepts that would temper the harsh rule imposed by OBRA 1990.

As with most proposals affecting benefits for veterans and their dependants, this area is controversial. In addition, we must act in a fiscally responsible manner. Whatever liberalization we may recommend to the House must be presented in a budget-neutral manner. Whether we like it or not, we are playing basically a zero sum game, so any increase in benefits that we endorse will have to be paid for by some offsetting savings in other parts of our budget, and that is not a pleasant reality that we are dealing with, but nonetheless it is what we find ourselves facing.

So as we determine the course we will follow, we will also be looking for the most equitable ways to offset any additional cost. It is not an impossible task, but it is one that we are going to have to work together on if we are going to make any changes in these areas.

I hope that all proponents of legislation—all proponents of legislation—will recognize the fiscal restraints that we are operating under, and as they propose changes in benefit programs that will, in fact, cost additional money, I expect them and hope that they

will also be proposing ways to pay for those changes within our budget. We are not going to be able to rob money from other committees to pay for expansions in our budget. That is just again the realities that we find ourselves working under.

So without any further ado, I am advised that our friend, ranking minority member, Mr. Bilirakis, is at a caucus and will be joining us soon, so at this time I would be happy to recognize the chairman of the full committee if he has any opening statement he would like to make.

Mr. Montgomery.

Mr. MONTGOMERY. Thank you, Mr. Chairman. It seems like we a full plate before us today and in the next 2 weeks. As I understand it, you will mark up several of these bills on the 22nd, and I believe we have scheduled a full committee markup on the 26th.

Mr. SLATTERY. That is the intention of the subcommittee chair; yes, sir.

Mr. MONTGOMERY. Well, thanks for letting me be here today.

Mr. SLATTERY. We are honored to have you, Mr. Montgomery.

The gentleman from Illinois, Mr. Evans.

OPENING STATEMENT OF HON. LANE EVANS

Mr. EVANS. Thank you, Mr. Chairman.

Because of some other hearings on Somalia and Haiti, I will have to leave, but I wanted to make an opening statement because of the importance of these issues and because I know you will be going on for quite some time, and I want to reemphasize my support for the 3 percent COLA for veterans benefits in fiscal year 1994 and to increase the pension paid to the Congressional Medal of Honor winners.

I also support your efforts to reinstate DIC benefits to surviving spouses whose marriages have been terminated. This is an artifact of OBRA 1990, the present situation, which is unacceptable, and it essentially makes some surviving spouses of veterans second-class citizens.

On the other hand, I cannot support VA's proposal dealing with the Board of Veterans' Appeals. While there are few provisions in the proposal that I would endorse, they are surprisingly few. In fact, I believe that if the proposed language was enacted the rights of veterans would be eroded.

The Court of Veterans Appeals is not a problem. In fact, I would like to remind everyone that the number and backlog of cases was increasing even before the creation of the Court of Veterans Appeals, so I will strongly oppose any efforts to curtail veterans' right to judicial review.

Nonetheless, VA's current adjudication system is not working and needs to be fixed. Any change, however, must affect the way regional offices as well as the Board of Veterans' Appeals in the way that they process claims. For this reason, I will be introducing legislation, the Veterans' Adjudication Procedures Act of 1993, in the next few days that will radically reform the way claims are processed.

My legislation is based in large part on the consensus recommendations of the veterans' service organizations provided to this subcommittee earlier this year. The recommendations that

they put forth were comprehensive and I think very thoughtful, and I want to thank them for their efforts and for their commitment to our veterans.

The legislation's major provisions would establish a clear work rate standard for adjudication employees, mandate a detailed annual report on the status of benefit claims, reform certain BVA procedures, and establish a clear queue standard. It is my hope that we can consider the Veterans' Adjudication Procedures Act of 1993 at the markup.

I have also introduced H.R. 3240, a measure which would raise the pay of BVA members to that of administrative law judges with comparable experience and eliminate the current term limits. Congressman Mike Bilirakis has introduced similar legislation, and it is my hope that we can work together on these issues.

As you know, Board members currently receive significantly less pay than ALJ's and are appointed for fixed terms with the option of reappointment by the chairman of the BVA. Taken together, these two factors have resulted in the unacceptable rate of turnover in the Board members. Veterans deserve to have their appeals to the BVA heard by knowledgeable and experienced Board members. In order for this to occur, members must be encouraged to stay on the Board.

Despite widespread agreement that something must be done to restore morale and reduce turnover on the Board, several of my colleagues and representatives of the VSO's have expressed concerns over the cost and tenure provisions of this measure. Noting these concerns, I plan to work with the Board of Veterans' Appeals professional association, the VSO's, and the members of this subcommittee in developing legislation that can adequately address this problem.

Mr. Chairman, I thank you for convening these hearings and look forward to working with you on these issues, and I will have to leave now for those other hearings, but I don't want that to be any indication of my lack of support for your efforts.

Mr. SLATTERY. I am well aware of your interest in this, Lane, and I appreciate your hard work on it, and thank you for your input, and I hope you can make it back; if you can't, we understand.

Mr. EVANS. Thank you.

Mr. SLATTERY. Okay.

Does the gentleman from Texas wish to be recognized for an opening statement?

Mr. EDWARDS of Texas. Mr. Chairman, just very briefly. I want to thank you for holding the hearings, and I would just like to underscore a comment you had made which perhaps isn't always a popular one, and that is to say that as long as this committee doesn't control the Budget Committee, and we cannot determine the size of the pie of funding for veterans' programs, the decisions in this committee are a zero sum game, and if we increase benefits in one area, I think we need to be honest with veterans groups and the taxpayers and recognize we have got to take some money out of other veterans' programs.

I hope that sense of realism will surround all of our discussions on any legislation dealing with veterans' programs, and I appreciate your comments to that effect.

Mr. SLATTERY. Thank you.

Does the other gentleman from Texas wish to be recognized for an opening statement?

Mr. TEJEDA. No, Mr. Chairman.

Mr. SLATTERY. I appreciate the gentleman from Texas' observation about the budget problems that we face, because we don't control the Budget Committee, regrettably, and we have a certain amount of money to work with, and we have to decide how we can best spend that money to serve veterans' needs in this country, and we recognize that there are veterans' needs that are going unmet as we make these decisions.

But hopefully with some of the changes that we may be discussing here today, we can make some minor changes that will repair some of the more obvious flaws, I think, in the benefit programs that we have and make them more equitable and enable us to get some resources to some people that are very deserving. So I appreciate your comments.

Mr. SLATTERY. On the first panel this morning, we have Mr. Charles Cragin, who is chairman of the Board of Veterans' Appeals, and he will be accompanied by Mr. John Vogel, the deputy under secretary for benefits; and Mr. Gary Hickan, who is the director of Compensation and Pension Service; and Mr. John Thompson, the assistant general counsel. So if you gentlemen will take the witness table, I would appreciate it.

Mr. Cragin, you are recognized. We have received a copy of your testimony, and I would urge you and all the other witnesses today to summarize your statements.

STATEMENT OF CHARLES CRAGIN, CHAIRMAN, BOARD OF VETERANS' APPEALS, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY R. JOHN VOGEL, DEPUTY UNDER SECRETARY FOR BENEFITS; J. GARY HICKMAN, DIRECTOR, COMPENSATION AND PENSION SERVICE; AND JOHN THOMPSON, ASSISTANT GENERAL COUNSEL

Mr. CRAGIN. Good morning Mr. Chairman, and members of the subcommittee.

Thank you for providing an opportunity for the Department of Veterans Affairs to testify on the draft bill which was forwarded to the Congress by the Secretary of Veterans Affairs entitled the Veterans' Appeals Improvement Act of 1993, as well as to comment on the Veterans' Compensation Rates Amendments of 1993, H.R. 2341, and H.R. 1796, which proposes to increase the special pension payable to recipients of the Congressional Medal of Honor. Each of these bills has been addressed at length in my written statement to the subcommittee, and my colleagues and I from the Department will be happy to answer any questions that you may have regarding them.

At the outset, however, I would like to take this opportunity to briefly present you with more recent statistical information regarding the Board of Veterans' Appeals than was available in August

1993, when Secretary Brown wrote to the Speaker of the House to transmit the draft bill.

Current data show that in fiscal year 1993 the Board issued 26,400 decisions, 1,200 decisions below the fiscal year 1993 projection of 27,600 decisions. Of these, 16.9 percent were allowances, 36.9 percent were denials, 44 percent were remands, and other dispositions such as withdrawn appeals accounted for 2.2 percent.

Appeals received at the Board in fiscal year 1993 totaled 38,147. At the close of fiscal year 1993, 33,728 appeals were pending at the Board. The Board conducted 1,172 personal hearings in Washington, DC. And 3,533 hearings at VA regional offices throughout the country and in the Philippines.

The average response time increased from 240 days in fiscal year 1992 to 466 days in fiscal year 1993. In addition, the Board provided written responses to 5,366 pieces of congressional correspondence as well as 1,469 telephonic responses to Members of Congress and their staffs.

I hope that this data will assist you in your consideration of the draft legislation. I believe that this information confirms the trends noted in the Secretary's transmittal letter which the Department's draft bill proposed to help ameliorate. The bill would authorize several changes in BVA procedures, the most significant of which would be to permit individual Board members, rather than three-member panels, to rule on matters before the Board other than decisions on reconsideration. This, in itself, would have a significant impact on decision productivity and average response time.

To illustrate, based on current data, it is projected that the Board's average response time for 1994 fiscal year will be 725 days, essentially 2 years. Productivity is projected at 24,350 decisions. This projection does not include single-member decision authority or additional staffing and assumes receipts of 39,000 appeals. Under the same assumptions in fiscal year 1995, average response time will reach 945 days, or 2 years, 7½ months, with 24,350 decisions produced annually.

If single-member decisions were authorized with no additional staffing, projected average response time for fiscal year 1995 would be 662 days with 31,050 decisions produced. That would represent an improvement of 283 days in the average response time and an increase in decisional output of 6,700 decisions.

The bill also would permit the BVA chairman or vice chairman to administratively allow, on the basis of a difference of opinion, previously denied claims. It would permit BVA to use modern telecommunications technology to hold hearings with the presiding Board member or members in Washington, DC, with the claimant located at a remote location. In addition, the bill would clarify the Board's authority to utilize medical opinions from VA or other Government physicians including BVA's own staff medical advisors.

The enactment of this proposed legislation would give the Board greater flexibility to meet its increased workload and permit it to strive to render high-quality decisions with improved timeliness.

With respect to the pending legislation being considered by the committee, VA generally favors the Veterans' Compensation Rates Amendments of 1993 at least with regard to the anticipated 3 percent COLA applied to the rates of compensation for service-con-

nected disability and the rates of dependency and indemnity compensation, DIC, based on veterans' deaths before January 1, 1993.

Should the current estimate of 3 percent prove incorrect, VA would support a COLA equal to the actual increase in Social Security benefits. We also support a limited COLA in the rates of DIC for deaths occurring before 1993 as provided for in OBRA 1993.

VA must object to H.R. 1796 because it would decrease direct spending under the pay-as-you-go provisions of the Budget Enforcement Act with no offset provided in the bill. However, we will work with the committee to identify the resources necessary to enact this legislation consistent with the Budget Enforcement Act.

Mr. Chairman, thank you for providing the opportunity for the Department to testify on these important issues. Once again, my colleagues and I stand ready to answer any questions that you and your colleagues might have.

Thank you, sir.

[The prepared statement of Mr. Cragin appears at p. 86.]

Mr. SLATTERY. Thank you, Mr. Cragin. Let me ask several questions here of you and other panelists at the table.

One of the draft bill's provisions would eliminate the cap on the number of Board members. Currently there are 65 Board members in addition to the chairman and vice chairman. If the cap were to be removed, do you have any idea what the optimum number of Board members should be?

Mr. CRAGIN. No, Mr. Chairman, I don't at this time have any idea what the optimum number would be. The removal of the cap is proposed in order to provide the Secretary and the President, working in concert, to make that managerial decision on a timely basis, if and when resources are available to expand the number of Board members, other than through the appointment of acting Board members.

Mr. SLATTERY. What are we looking at? Do you think we need another 10, 20, 30, 100? Give me an idea of what kind of an increase we are looking at over there.

Mr. CRAGIN. Mr. Chairman, it frankly will depend on how the Board ultimately is determined to do its business. Right now, I have five individuals who are serving as acting Board members under the appointing authority of the statute. Four of those are individuals whom the Secretary has appointed. We are awaiting Presidential approval.

The ability to utilize acting members on a short-term basis would indicate that you don't have to appoint a population to the Board on a long-term basis. But I am not at this point in time, based on the fluidity of this situation, able to project on a long-term basis the need to appoint more members. We are just looking for the ability to respond to that situation once there is some stability.

Mr. SLATTERY. What are these Board members making generally? Give me an idea.

Mr. CRAGIN. With the exception of the vice chairman and the deputy vice chairman who holds grades of SES–5 and SES–4, all of the Board members are GS–15 appointees, and they would be compensateed on that pay schedule depending upon their time in grade, steps, et cetera.

Mr. SLATTERY. Okay.

I note in your written statement that you did not contain any comment on the three DIC concepts I noted in my letter to you of October 5. Would any of you at the panel this morning want to comment on that?

Mr. VOGEL. Mr. Chairman, we don't have a cleared position on the issues raised with respect to DIC, but once we know what offsetting savings may be proposed, we would be pleased to provide a position.

By eliminating remarried spouses' entitlement to reinstatement in the Omnibus Budget Reconciliation Act of 1990, I think it can reasonably be concluded that Congress felt that this entitlement was not as a high a priority as other VA entitlements.

It does seem to us that the Government's obligation to help maintain a deceased veteran's household changes when the surviving spouse remarries and establishes a new household, but we would be happy to work with you on the issue.

We have concerns about the time limits that you asked us to comment on, namely how long the subsequent marriage lasted. Administratively, that would pose problems for us, because an individual could not really control whether the final dissolution of a marriage would fall within a 1-year, 2-year, or 3-year period of time. That kind of determination could appear to be arbitrary and difficult for us to administer.

Mr. SLATTERY. Have you kept any statistics on the number of claimants who have sought reinstatement to benefits eligibility but have been denied because of the OBRA 1990 provision?

Mr. HICKMAN. Mr. Chairman, we do not have those statistics. We do feel, however, that there are some eligible persons who have not applied.

I would like to add something to what Mr. Vogel stated. As part of Public Law 102–568, Congress commissioned the General Accounting Office to study benefits to the survivors of veterans and members of the Armed Forces. I think we should look at those findings as well in arriving at a determination about reinstating some measure of entitlement to remarried spouses.

Mr. SLATTERY. Okay.

If we allow single-member decisions at the Board, will the Board members be writing their own decisions, or will the staff attorneys continue to draft these decisions? Do you intend to hire additional staff attorneys to deal with this? I am just curious how you envision this all being dealt with.

Mr. CRAGIN. We are engaged in a number of experiments at the Board. I have encouraged, for example, Board members to participate earlier on in evaluating the C file rather than waiting for a draft decision to arrive on individual Board members' desks.

I do not envision, however, that, generally speaking, Board members will be drafting from the initial or primary stage all of the decisions.

We have a very young organization, Mr. Chairman, in spite of the fact that we celebrated our 60th anniversary this year. One hundred and seventy attorneys now serve as counsel or associate counsel to Board members. Of those, 85 attorneys have been hired since I came to the Board.

Mr. SLATTERY. Okay.

One last question, and then I will recognize my colleagues for any questions they might have.

Obviously, to the extent that we hire new personnel, we are going to need some additional money, and I am just curious: Have you all come up with any ideas as to where we might find some additional resources to help pay for some these new people?

Mr. CRAGIN. We are working with Secretary Brown and the Department to evaluate the budgeting process for fiscal year 1995.

Obviously, as you mentioned earlier, along with Congressman Edwards, in a period of fiscal constraint we are all compelled to look for nonfiscal ways to improve productivity in service to veterans, and that essentially was what Secretary Brown was proposing in the draft legislation, a nonfiscal way to speed up this process.

Mr. SLATTERY. Okay.

At this time the chair will recognize the chairman of the full committee if he has any questions.

Mr. MONTGOMERY. Thank you, Mr. Chairman. I thank our witnesses for being here today and the work you do for our veterans.

We all have concern about pending appeals and the time that it now takes to receive a decision. I believe it used to be 139 days that would be the response time on a veteran's appeal; and in 1992 it jumps up to 240 days and then 441 days in 1993 and I couldn't see in your statement, but you did say over 700 days in 1994. Is that correct?

Mr. CRAGIN. That is correct, Mr. Chairman.

Mr. MONTGOMERY. That is if you make no changes.

Mr. CRAGIN. As a matter of fact, the 441 average response time figure was a fiscal year 1993 projection. The ultimate number when we closed our books at the end of the fiscal year was 466 days, and we are projecting, as I indicated, 725 days for fiscal year 1994.

Mr. MONTGOMERY. Mr. Chairman, I don't think we have any choice. We have to come up with some way to speed up these appeals. Actually, we will be worse than Social Security as far as time-wise. Is that correct?

Mr. CRAGIN. I am not totally conversant with the statistics of Social Security, but in the history of the Board of Veterans' Appeals, it is my understanding that the response time has never been anything like this in the 60-year history of the Board.

Mr. MONTGOMERY. I think you should compare it, because Social Security has been out there. At least we ought to know what their time limit is compared to ours. I don't think I would have any problem, Mr. Chairman, if you just have one Veterans' Board member make some of these decisions if it will help speed it up. Maybe they will make a few mistakes, but if you take three to do it and you drop it down to one, any way to speed up the process, it seems that it needs to be done.

Mr. CRAGIN. Mr. Chairman, as I have indicated in testimony before this subcommittee before, we would also be proposing to improve or increase the quality review activities to ensure that we get the same consistency in the application of the facts to the rule of law with single-member decisions as we have with three-member decisions. But you are absolutely correct, it is going to help us decide more veterans' cases on a faster track.

Mr. MONTGOMERY. One other question, Mr. Chairman. The court that we have set up, the judicial review by judges—Judge Nebekker heads this court which we are very proud to have—but that has added to the time. Is that correct? It has added to the time now that it takes you to get these responses?

Mr. CRAGIN. Yes, Mr. Chairman. I think it would be fair to say that the product being produced at the Board of Veterans' Appeals as the result of the enactment of the Veterans Judicial Review Act, the requirement of the articulation of reasons and bases in each decision, the scrutiny provided to decisions of the Board by the Court of Veterans Appeals, and the requirement that the entire Department, including the Board of Veterans' Appeals, under the decision of *Tobler* v. *Derwinski*, apply that law as the law of the land in every subsequent decision that it renders when taken together, increases or enlarges the size of the product and obviously diminishes the number of products that can be issued by the same resources.

Mr. MONTGOMERY. Mr. Chairman, you know, this is a new court, and we really thought it through. We didn't want to have a big court system like the appeals process that Social Security has and instead have one single court where they would be consistent in how they make decisions: It wouldn't be different in California than it would be in Maine.

So we have got some problems. I hope we can work them out, because this time of response for pending appeals, we have got to bring that down.

Thank you.

Mr. SLATTERY. I thank the chairman of the full committee chairman of the full committee for his comments. This is a problem that I have tried to zero in on all year, and I am determined to try to get a solution to this before I complete my tour of duty here.

One of the things I would just observes observe is—and I would ask Charlie a question here—is, you know, in 1992, according to the information you gave us today, you were looking at about a 240-day period for determination, and then that has gone to 466 in 1993, projected at 725 days in 1994, and then, if nothing is done, we are looking at 945 days you are projecting in 1995, and I guess what I would like from you all is a plan to turn this around so that by 1995 we are looking at 240 days, back to where we were in 1992, instead of 945 days.

If you can tell me today what it would take for us to do that, I would like to like to know. If you can't, I would like to have a plan in writing as to how we can correct this problem and what kind of personnel are needed.

I just really believe very strongly that when we talk about whether it is 945 days or 725 days, whether it is 2 years or 3 years in delays to adjudicate these claims—I mean this is just totally unacceptable, and we are truly into a situation where justice delayed this long is really justice denied for a lot of people, and I think we need to address this, and I need to know from you all what is a reasonable plan of attack and how we can deal with this.

I will let you respond to my question, and then I will recognize the gentleman from Texas.

Mr. CRAGIN. Mr. Chairman, I would point out that the draft legislation submitted by the Secretary for your consideration is, in

fact, the first facet of that plan. I think we all understand that this court is evolving a body of veterans' common law, and as it issues its decisions, they have a direct and immediate impact upon the entire Department of Veterans Affairs ajudicatory process. Until that level playing field has been realized, we are going to be in a reactive mode with respect to those decisions.

Our plan is to train our people as best as we can, using the resources available to us, issue timely, consistent, quality decisions, and react as rapidly as possible to precedentially binding decisions of the court. But the Veterans' Appeals Improvement Act of 1993 is, in fact, the first step forward to improve this process, and I should point out that the average response time is a creature of the backlog that is increasing at the Board of Veterans' Appeals.

In fiscal year 1992 when our response time was 240 days, we issued 33,483 decisions and we had 38,229 come in the door. It is kind of like the flood in the Midwest. This year, we only pumped out 26,400 and we had 38,147 come in the door. So we have got a fairly constant flow in, and we have a declining flow out, thus expanding the average response time.

Mr. SLATTERY. I understand, Charlie, what you are telling me. I am not trying to say that this is your problem over there necessarily. I mean I think the Congress, in the creation of the court, is responsible for part of this.

What I do need to know from you all, though, is how we can shorten this time period. I understand that the Secretary's proposal to date will significantly reduce the outyear average response time. I understand that, but all I am saying is that a 2-year response time is still not where we need to be, and what I would like to know—and we may not have the resources to do it, okay? I am going to try and find the resources to do it, but what I am asking you to do is put together a plan that will put on paper what, in your judgment, would be necessary to reduce this average response time in 1995 to under 1 year, to 200 and some days as opposed to what we are going to be looking at, which is close to 2 years, even if we adopt a single-member Board concept, or the single authority on the Board.

So I am asking you for something beyond what we have already talked about, and I understand that, but I am just curious as to what you think would be necessary in terms of personnel, and if you have procedural changes that you think will be required to get this job done, I am just curious what that is. I would like to see your plan if you were king for a day what would be necessary to deal with this so we can see that as sort of a benchmark of where we need to be.

Mr. CRAGIN. Some people have suggested that from time to time I have proposed to be "king for the day."

Mr. SLATTERY. Well, we don't need to get into that today, but do you understand my request?

Mr. CRAGIN. I hear you very well, Mr. Chairman.

Mr. SLATTERY. Okay.

The gentleman from Texas.

Mr. EDWARDS of Texas. Thank you, Mr. Chairman.

Mr. Chairman, I apologize if I missed these numbers, but could you tell me, based on the passage of Secretary Brown's rec-

ommended bill, what the response time would be in fiscal year 1995 compared to the 945 days estimated right now?

Mr. CRAGIN. Yes, Congressman Edwards. Essentially we are projecting a 25 percent improvement on an annual basis based solely on the enactment of single-member authorizing legislation. Without single-member legislation in fiscal year 1995, the response time we are projecting would be 945 days, issuing 24,350 decisions. With single-member authority, no additional staffing, the projected average response time would be 662 days with the issuance of 31,050 decisions, 6,700 additional decisions.

Mr. EDWARDS of Texas. Okay. Thank you very much.

Mr. CRAGIN. You are welcome, sir.

Mr. SLATTERY. Mr. Tejeda.

Mr. TEJEDA. Thank you, Mr. Chairman.

On section three of the draft legislation on page 4, it deals with assignments of matters before the Board, and it mentions how the chairman my determine or assign to another Board member, but it also has "Any such assignment by the chairman may not be reviewed by any other official or by any court." Can you explain why you are making that request, and is that dealing specifically with the assignment itself, or does it deal with determination also? I know you speak of both in that, but I do know that section 4's determination—you aren't in any way trying to restrict the veterans seeking judicial review on this, are you?

Mr. CRAGIN. Absolutely not, Mr. Tejeda, and let me explain what we do today under the law and what is proposed.

As you can well imagine, someone has to have the managerial responsibility for assigning 33,000 cases. I can't just throw them into the lobby of the Lafayette Building and say to the Board members, "Go pick out whatever you want." We are required to assign cases by docket order, and we currently assign cases to 21 sections.

I have that authority under the existing law to assign to any section of Board members cases and any motions attached thereto, and once assigned, the section is required to issue the final decision.

All this legislation proposes to do is to cross out "section" and say that the chairman has the ability to assign to any Board member specific cases or motions attached thereto.

I also happen to be a member of the Board and have, in fact, participated in one decision to date in which we had a short turnaround time by the court, and I would anticipate that there may be instances even in a single-member environment when I, as a single member of the Board, may be called upon to take some action.

We in no way, however, are suggesting that in a final decision issued by the chairman as a "determination" or any other member of the Board as a determination, that that matter would not be subject to judicial review.

All we are suggesting is that when I assign a particular veteran's claim to a particular single member of the Board, that that aassignment, in and of itself, is not subject to judicial review. If, in fact, it becomes subject to judicial review, then each time I assign one of 33—38,000 cases, I will have to make a record of the reason why I made that assignment to that member since the court

can only review the record of the Board. That, in my opinion, would just create another major stumbling block to improving the productivity of the Board, and we thought "let's just make it clear that we do not believe that sort of managerial discretionary act by the chairman is judicially reviewable by a court," and that is why that proposed language is in there.

Mr. TEJEDA. Just to follow up, you can assign to a panel or a number, a section of Board members?

Mr. CRAGIN. Absolutely. Subject to check, I think it is Section 7104, subsection C, but I may be wrong.

Mr. TEJEDA. Is that assignment under current law subject to judicial review?

Mr. CRAGIN. There is no explicit statement in any statute or regulation that it is subject to judicial review. No one has yet made such an assertion before the court. We are operating on the premise, in light of the fact that in the Patterson decision the court said that reconsideration decisions by the chairman not to grant a motion for reconsideration when it was on the basis of obvious error would not be reviewable by the court, even though it had jurisdiction, because it would be essentially going over plowed ground.

I do not believe the court would invade the managerial province of the chairman to assign cases within the Board, just as I do not suspect the Court of Appeals for the Federal Circuit would entertain a request to review Chief Judge Nebekker's assignment of cases before that body to individual judges.

Mr. TEJEDA. Thank you.

Thank you, Mr. Chairman.

Mr. SLATTERY. Thank you.

At this time the chair will recognize the minority counsel for any questions that she might have.

Ms. FORREST. Thank you, Mr. Chairman.

I want to follow up on Congressman Tejeda's question. Mr. Cragin, if we were to change the language in the bill to provide for the entire record to go to the court, would this section be necessary as far as your assignments to the Board members?

Mr. CRAGIN. Yes, Ms. Forrest. In my opinion, they are two entirely different issues. I am talking about when your case, Veteran Forrest's appeal, comes into the Board. I am going to have 63 Board members that adjudicate cases, and we have to, in an orderly fashion, assign that case to a Board member. Now we assign them to sections.

The issue of the entire record is an issue of what the court looks at on appellate review. I think Secretary Brown has resolved that issue by requiring the Board, beginning on October 1, to specifically delineate in each of its decisions all of the evidence that was considered by the Board in reaching its decision.

Ms. FORREST. Okay, I understand that. But if we were to send the entire C file to the court instead of the record being designated as it is now, would this be necessary?

Mr. CRAGIN. Yes, Ma'am, because I still have to decide which one of my Board members is going to adjudicate that case initially. I have to assign the case to a judge at my level, and that is what the term "assign" means.

Ms. FORREST. Okay, but my question is—I understand that you have to assign them to Board members; I mean that is your job.

Mr. CRAGIN. Okay.

Ms. FORREST. My question is, why would it be necessary to have the language in here about the court having the authority to question your assignment if they have the entire C file in front of them? That is my question.

Mr. CRAGIN. Because the issue is a distinctly different issue. The issue would be, was the chairman committing error when he assigned that case to a specific Board member? There is nothing in the C file that would indicate why the assignment was made.

I mean we assign cases based on terminal digits of C numbers, but if that is going to be a reviewable issue, then I will have to prepare a document for the record articulating the reasons and bases upon which I determined that Member X rather than Member Y was to be assigned a particular case. Frankly, it would be a nightmare.

Ms. FORREST. Okay.

Another question. In section 4(d) of the draft bill there is a provision which would prohibit judicial review of the chairman's determination to exercise your authority over administratively allowing a claim. Please expand on this particular subject.

Mr. CRAGIN. Sure.

The process of administrative allowance, as indicated in the bill, is a process in which a Board member may bring to the chairman's attention a case in which the Board member feels that, while the result is legally correct, it may be harsh and may be subject to a difference of opinion. For example, in applying the benefit of the doubt rule when evidence is in equipoise, this is essentially a very close call in many instances, and perhaps an individual Board member may have, in his or her personal wisdom, being as objective as they can, decided that the evidence was not in equipoise and they could not give the benefit of the doubt to the veteran.

The case comes to me. I look at the same question, and I have a difference of opinion. I say, had I been deciding that case, even though it is legally correct what has happened, I would have allowed that benefit for the veteran; hence the difference of opinion.

Now, if the case comes to me and I look at it, and I say I don't have a difference of opinion, why review the fact that I decided I didn't have a difference of opinion? The final decision of the Board member is there, and that, in fact, is reviewable, because if we are going to review not only the final decision of the Board member which, after review, I decided I agreed with and didn't have a difference of opinion, as well as my decision, then I also have to write an opinion on why I decided there wasn't a difference of opinion, and, you know, courts only review opinions, and all that does is create additional work.

What we are trying to do is get this Board into a modality in a single-member environment whereby, if we have individual members who seem to be exercising their objective judgment in a manner which appears harsh and denying veterans' allowances, then the chairman, exercising this authority, can overrule it on a case-by-case basis rather than expending the additional resources of the

Board and expanding the panel to three members for reconsideration and things of that nature.

Ms. FORREST. One last question. In testimony by the Blinded Veterans Association, there is a recommendation to include language in section 7109 of the draft bill to require that documents reviewed cite references for conclusions and be made part of the record. Would you be in favor of amending that section to reflect this recommendation? If not, why not?

Mr. CRAGIN. Secretary Brown, as I mentioned, issued an instruction to the Board which, pursuant to the statute, we are bound to abide by, that we must list as part of our decisions every specific item of relevant evidence which was considered by the Board in reaching its decision. So I think administratively we have already accomplished that fact.

My concern in a period of rapidly changing law—to lock us into specific types of procedures in a statute may really cause more harm than good.

For example, Secretary Brown has said insert all relevant documents in the record. The court, in an instance, can declare what the term "relevant" means in a decision and we are bound to abide by it. But if the court doesn't declare what "relevant" is, I don't have the authority to say "relevant" means rule 401 of the Federal Rules of Evidence, I have to go to rule-making and spend a year and a half seeking out comment and everything in order to articulate what is "relevant," and so what we are looking for is an ability to respond immediately rather than get locked into having to wait 2 years to do so.

Ms. FORREST. Thank you very much, Mr. Chairman.

Mr. CRAGIN. You are welcome.

Mr. EDWARDS of Texas [presiding]. Thank you very much.

Are there any other questions from Members? If not, thank you all for being here.

Mr. EDWARDS. of Texas. The chair would now like to call forward panel number one: Col. Herb Rosenbleeth, national executive director for the Jewish War Veterans,; Mr. James R. Peluso, the legislative chair of the National Association of State Directors of Veterans' Affairs, New York State; Mr. Richard Bernard, the deputy commissioner of veterans' affairs, State of New Jersey; and Dr. Charles A. Stenger, veterans' affairs and legislative counsel of the American Ex-Prisoners of War.

Let me say while you are coming up, if there are any Members or staff who have questions to submit for the record, without objection, they will be entered.

Let me begin by thanking all of you for being here today. In the interests of time and in respect to the fact that there are four panels today, so we can allow those to be heard, I would like to ask if you would submit any lengthy written testimony, which will be included in the record, and would ask you to summarize your comments, if you could, and then we will open up the panel for questions from Members and staff.

Colonel Rosenbleeth, if we could just begin with you and then go down the table. Thank you for being here.

STATEMENTS OF COL. HERB ROSENBLETH (RET.), NATIONAL EXECUTIVE DIRECTOR, JEWISH WAR VETERANS; JAMES R. PELUSO, LEGISLATIVE CHAIR, NATIONAL ASSOCIATION OF STATE DIRECTORS OF VETERANS AFFAIRS, NEW YORK STATE; RICHARD J. BERNARD, DEPUTY COMMISSIONER OF VETERANS' AFFAIRS, STATE OF NEW JERSEY; AND CHARLES A. STENGER, VETERANS AFFAIRS AND LEGISLATIVE COUNSEL, AMERICAN EX-PRISONERS OF WAR

STATEMENT OF COL. HERB ROSENBLEETH (RET.)

Colonel ROSENBLEETH. Good morning, Mr. Chairman and members of the subcommittee.

As you request, Mr. Chairman, I will summarize our five points.

First on the issue of COLA, JWV strongly recommends the approval of a 3 percent COLA or whatever the numbers turn out to be. I might express my own feelings on this. In my 28 years and 1 month of military service, I personally enlisted and reenlisted many young servicemen, and I frequently told them that, should they become disabled or should they complete 20 years of active service, they would receive a cost-of-living adjustment which would protect the purchasing power of that payment, and I many times regret that I made the promise because it is one that has not been borne out to be true.

I think it is disgraceful that there are some Members of Congress that have taken away the COLA for retirees and that even toy with the idea of taking away the cost-of-living adjustment to disabled veterans. We feel very strongly that the cost-of-living adjustment should be preserved for those former members of the military who are disabled or retired.

The second issue of the Congressional Medal of Honor Person: Mr. Chairman, certainly our organization recommends the pension increase from $200 to $500 per month as provided for in H.R. 1796. I wish to thank and commend Dick Bernard, my colleague, who I know has personally done a great deal of work on this legislation. Dick, I appreciate very, very much what you have done.

These individuals deserve such an increase. It has been many years since they have had one. Our organization provides our fullest support for this legislation.

Item number three: Some of my copies have COVA where it should say BVA. I meant to use the word "Board." Our organization supports the concept of single-member decisions. We would ask that the chairman be permitted to overrule the single member when the decision goes against the veteran, when the claim has been denied. Otherwise, we see a single-member process as speeding up the backlog and helping to overcome the backlog of claims.

Number four, on the spousal benefits: My statement was sent over before I entered my comments, so I would like to briefly touch on them. Item number one: Provide for reinstatement for marriages of a short duration. No, I would oppose that. I would want to see DIC restored complete—complete DIC restored for anyone whose marriage ended in divorce.

Item number two, where the word "offset" is used, I would oppose that. I see no reason for an offset. The surviving spouse de-

serves the DIC, and other income they have should not be relevant in that instance.

So therefore, our organization would support this third option; that is, reinstatement of the VA benefits; but I would object to the one-third or the one-half. I look to more like 75 to 90 percent of the rate. I don't know why the spouse of someone who is killed in action or who died of 100 percent service-connected causes should be treated so poorly.

On the issue of, where will the money come from? deep down, of course, I don't think it should have to come from the VA budget. I think that somewhere the Congress ought to have the judgment to provide for surviving spouses. But if it has to come from the Department of Veterans Affairs, if you are forcing me to make a selection, well, I have walked through the VA, and I see extra people, it appears to me, over in the data processing and perhaps in the construction areas. But that is a poor second choice. My first choice is, somehow the Congress should see the need for providing for surviving spouses.

The fifth item, on the Board of Veterans' Appeals, the pay and the tenure, I can't say I really care how they are paid or what their tenure is. I care that they are interested in veterans, that they are the kind of people that will take care of the veteran; that is the most important thing.

Then, of course, where would the money come from if they got an additional raise? If it is going to come out of veterans' benefits or out of veterans' hospitals, then I would not be in favor of it. So I guess our organization would have no comment on this question until I would hear what Secretary Jesse Brown would say about this issue.

In closing, Mr. Chairman, I appreciate the opportunity to have appeared before you and present our views. Thank you.

[The prepared statement of Colonel Rosenbleeth appears at p. 94.]

Mr. EDWARDS of Texas. Thank you very much, Colonel, for being here, and let me just echo your comments. I don't think any of us like to be forced into some of these tough decisions, and I hope we can all work together to convince the Budget Committee to make changes and approve funding for veterans. But I think until that happens, it is important for all of us to spread the message to the Budget Committee and to veterans throughout the country that we need their help in the funding of those programs.

Colonel ROSENBLEETH. Thank you.

Mr. EDWARDS of Texas. Thank you very much.

Mr. Peluso.

STATEMENT OF JAMES R. PELUSO

Mr. PELUSO. Thank you.

My name is Jim Peluso. I am the State director of veterans' affairs from New York and also the legislative chair for the National Association of State Directors, and to briefly summarize our written testimony, I would just like to comment that the National Association of State Directors does indeed support Secretary Brown's proposals for the Board of Veterans' Appeals. Taken together, we believe that they will give the Board needed flexibility, improve

productivity, improve the timeliness of the Board's decisions, and at the same time maintain the quality of those decisions.

We are also in support of the COLA for the disability compensation; and lastly, at our winter meeting in February 1993 the National Association of State Directors passed a resolution to support and encourage legislation to raise the special pension for recipients of the Medal of Honor.

As you know, Congressmen Spence and McNulty introduced legislation. There are now approximately 202 recipients of the Medal of Honor living today, and more than 40 of those men are living near or at the poverty level.

In 1958, Congress provided that the Veterans' Administration should pay a special pension of $100 per month to each person who had won the award of the Medal of Honor. That amount was increased to $200 in 1978. Today, inflation has eroded the value of the pension to the point where the pension is worth less than half of its 1978 value. Consequently, increasing the pension to $500 in 1993 will simply maintain the real value of the 1978 pension.

The proposed increase will certainly help those who are living in need. In addition, many of the recipients are asked to participate at community and government functions at their own expense. Therefore, this increase will help defray the expense of the ceremonial role that befalls the recipients of the Medal of Honor.

Regrettably, it is too easy to overlook the bravery and sacrifice that is symbolized by this special group of heroes. For almost 20 years we have failed to renew our appreciation to those heroes by including them in special pension in the COLA legislation that is routinely passed by Congress. This bill provides us with an opportunity to correct that oversight.

The cost of restoring the value of the pension is not prohibitive. We estimate the cost will be approximately $735,000. In addition, nearly half of the Medal of Honor recipients are over the age of 72. Consequently, that total cost will decline as the years pass, and this bill is supported by all of the major veterans' organizations, and we urge the subcommittee to report the bill favorably to the full committee.

This concludes my testimony. Thank you.

[The prepared statement of Mr. Peluso appears at p. 98.]

Mr. EDWARDS of Texas. Mr. Peluso, thank you very much.

Mr. Bernard.

STATEMENT OF RICHARD J. BERNARD

Mr. BERNARD. Thank you very much.

My name is Richard J. Bernard. I am deputy commissioner of veterans' affairs for New Jersey's Department of Military Veterans' Affairs. I am here today to testify in support of the increase in the special pension for the 202 living Medal of Honor recipients.

I am a service-connected disabled veteran from the Korean War who would not be here today nor have the privilege of testifying before you had it not been for three of the Medal of Honor recipients. I am sure this is the same with other veterans of all wars.

Throughout the history of our country, beginning in 1847, our Nation has recognized the contributions of extraordinarily brave individuals. The recipients of the Medal of Honor are often called

upon to address the various veterans' groups, schools, and other community organizations. What better group of men to be an example to our youth of America's devotion and patriotism than these individuals?

Our country is now in the midst of commemorating events of the 75th anniversary of the end of World War I, the 50th anniversary of significant events of World War II, the 40th anniversary of the ending of the Korean War, and the 20th anniversary of the beginning of withdrawal of U.S. troops from Vietnam. At this junction in history, it is important to assist our Medal of Honor recipients in continuing their mission of patriotism by providing this pension adjustment which would provide approximately the same purchasing power it did in 1978.

It is my belief this bill should be sponsored by every member of this committee and every Member of Congress, and this will send a message to the Medal of Honor recipients of what our country thinks of them. I urge the subcommittee to report favorably on this bill to the full committee.

This concludes my testimony, and I will be happy to answer any of the questions that any of the Members have.

Mr. EDWARDS of Texas. Mr. Bernard, thank you very much.

Dr. Stenger.

STATEMENT OF CHARLES A. STENGER

Dr. STENGER. I am Charles A. Stenger, representative of the American Ex-Prisoners of War.

To save time, we wholly endorse both 2341 and H.R. 1796 and believe that, as they have said before me, that these are things that our country has an obligation to its veterans, certainly to those who are Congressional Medal of Honor winners. I think all Americans would support that.

Now to the draft legislation. I would first of all be remiss if I didn't say that, while we are very much in support of this legislation, and I will detail it, we do consider it only half of the problem. The other half is the whole adjudication system of the VA, and we think it would be not really effective to deal with only the problem at the top, but the committee and the VA should deal with the whole problem.

Right now and for the 10 years that I have represented American Ex-Prisoners of War, I have seen over and over again the adversarial in-practice functions of the Veterans' Administration and the Board of Veterans' Appeals. They do not function as they are mandated to function, and I could give hundreds of examples of them.

The point is that their failure to do the job right the first time causes all of the appeals and then the reappeals. Many of my cases have come before the Board of Veterans' Appeals, six, eight, ten times, and we finally win the case, which means there were a lot of errors or a narrowing of congressional intent and other deficiencies in the process.

But we could save thousands and thousands of dollars if the VA would structure and follow through on these things correctly.

I once tabulated what it costs per hearing in a regional office and what it costs to the Board of Veterans' Appeals. Some of my cases, as I said, have come back ten times. That means they have gone

through maybe 10, 20 hearings in the regional office plus 10, 20 hearings in the Board of Veterans' Appeals. Figure what the cost of that is. If those organizations were doing their job right in terms of the mandate of Congress, those things would not happen. I can give you cases that I think are absolutely flagrant violations of the law, and they continue to persist. The Board of Veterans' Appeals, as do the regional offices, narrows the interpretation to the point that the mission, the intent of the law, is totally lost.

Anyhow, I would hope that this committee would encourage the Secretary of the Veterans' Administration to proceed to make major changes in the way they go about the whole adjudication process. I would be very happy to provide a couple of examples for the record, some of which have gotten to the point that they are so wrong that I have gotten the head of VA's psychiatry in Central Office to put in writing that he supports the judgment that was made by our organization, and it has been ignored. I mean an authoritative professional judgment is still disregarded by the regional offices and by the Board of Veterans' Appeals without any substantive reasons for doing so. They may find a technical reason, but they can't find a proper reason.

Now, we essentially support the proposed changes in the Board of Veterans' Appeals. We think that the current limitations have really impaired the powers of the Board of Veterans' Appeals chairman to conduct his organization in the best possible way.

We do not feel a single judge is a negative thing at all. As a matter of fact, in our view, it will lead to better decisions because that one person must become fully conversant with all the aspects of that record. We would suggest, however, that in personal hearings, that the individual who conducts the personal hearing be the person who follows through and makes the decision. If it is a different person, then you have lost all that time, and we are interested in being efficient.

I frankly do not understand why the Board of Veterans' Appeals isn't restructured a little further than what they are proposing. I don't see why it is necessary for the attorneys, the staff attorneys, to develop the case and then give it to a member of the Board who then must go through the process himself. It seems to me, especially where the cases are likely to be decided favorably, that the Board panel member ought to be the one that goes through that case and he comes to the attorneys if he has special questions, and they answer, they follow through, but right now they duplicate their own actions.

So I think they could save a step by cutting out the staff attorney who develops the case in terms of all of legal aspects. Let the panel member do this. Use the attorneys as resources with all the questions that person might have.

We are concerned with the fact they are proposing that physicians employed by the Board provide a medical opinion to a Board panel. We strongly recommend that the wording be amended to require the physician have recognized expertise in the area in which they are going to provide it, because right now we have had radiologists provide testimony in the area of psychiatry, and they are totally unprepared to do so, but they do provide opinions.

We think right now———

Mr. EDWARDS of Texas. Excuse me for interrupting. But in the interests of time and in fairness to the others, could I ask you to summarize within one minute?

Mr. STENGER. Yes, sir.

Mr. EDWARDS of Texas. Your testimony has been excellent, and I will encourage you to submit some of the cases you mentioned and the other points.

Mr. STENGER. Just a final statement.

Mr. EDWARDS of Texas. You bet.

Mr. STENGER. We believe that the image of the VA in the minds of the veteran community is and has been badly tarnished. The veteran does not see the Veterans' Administration as a resource for help when they need it but as an organization that will very often treat them in an impersonal, hostile, or indifferent way, and that should stop.

Thank you.

[The prepared statement of Mr. Stenger appears at p. 110.]

Mr. EDWARDS of Texas. Thank you, Dr. Stenger.

The chair would now like to recognize the ranking minority member of the committee, Mr. Bilirakis.

Mr. BILIRAKIS. Thank Mr. Chairman. I appreciate that, sir, and I apologize for being late. I don't make a practice of that, but we had a caucus this morning, and then I wanted to do a quick 1-minute on crime, and then ran over here.

I have a statement that I would ask unanimous consent be placed into the record and save time by my having to repeat it here today.

Mr. EDWARDS of Texas. Without objection, it is so ordered.

[The prepared statement of Congressman Bilirakis appears at p. 81.]

Mr. BILIRAKIS. Regarding H.R. 1796, as I understand it, the legislation would cost less than $1 million per year. I also understand that the Veterans' Administration—and I apologize to Mr. Vogel and Mr. Thompson and the others for not having been here to ask them the question directly—but as I understand it, this was supported by the Veterans' Administration, and then as recently as late last night a change took place.

Now we all know about OMB. Maybe the reason they are out there is because they can be basically the rationale for our decision-making over the years. I was under the impression quite frankly, and maybe falsely so—apparently falsely so—that when we elevated the VA to Cabinet status one of the big things we were gaining was a little more influence than it appears that they currently have insofar as OMB is concerned. I don't know, I may be trashing OMB here and maybe I shouldn't be doing it because it may not be their doing, but I would suspect it probably is.

Have any of you gentlemen heard from the VA their reasons for changing their minds? I mean we are talking about less than a million dollars a year, for crying out loud.

Mr. BERNARD. Both of us—I mean I am speaking for myself—had met with the Secretary. We were told that it had his support. But then it went over to OMB. And I personally will go to the White House to see if we can get this straightened out. This is something that definitely we can't let fall through the cracks.

Mr. BILIRAKIS. Any other comments? Herb?

Mr. PELUSO. I would just like to say I was with Dick with that meeting, and the Secretary did support this, and indeed the cost is estimated at about $735,000 for the 202 recipients, which, as I mentioned earlier, is declining every day.

Mr. BILIRAKIS. Yes.

Mr. BERNARD. May I just add, gentlemen, there are 96 World War II recipients; there are 29 Korean War recipients, there are 75 Vietnam War recipients; there is one from the liberty ship, 1965, in the Mediterranean and one from the submarine Sequel in 1938. We just lost one from Nicaragua, and we just lost General Doolittle. What are we doing?

Mr. BILIRAKIS. Yes.

Mr. BERNARD. What message are we sending?

Mr. BILIRAKIS. Well, we seem to be doing a lot of that bad message sending. I can go on to other pieces of legislation we have all tried to get through.

You know, we tend to forget. The other day we had a markup on health care, and I made the comments that basically, in this committee for years we have been concerned about the dollars. If all of the other committees in the Congress had been as concerned about the dollars over the years, we wouldn't have the budget deficits we now have. And this, after all, is an authorizing committee. I see that the chairman has returned. I am hopeful that, regardless of what OMB says and regardless of what the VA says, that we are going to use good common sense here. After all, this is the Veterans' Committee, and we have got to be concerned for the veterans. This is the authorizing committee. Let others be concerned more about the dollars. Let's just go forward and put their feet to the fire, and that is what we have got to do as far as that legislation is concerned. With the support of all the veterans out there, that is going to take place.

Mr. Stenger, I was pleased to hear your comments on the one-judge concept. I know that there are opposite schools of thought on that, but we have got to, I think, be open-minded to every idea.

Do you have any comments regarding legislation which would basically raise the pay level of those members to the same level as the ALJ's?

Mr. STENGER. I have no specific thoughts on it. I think that if they provide a comparable function, the pay ought to be comparable, but I am not sure, as it is structured now, the Board of Veterans' Appeals, the one-panel member in fact exercises the authority that I visualize these other judges have. But I believe if they do, they certainly should be paid a comparable amount of money that would solve their problem.

But I do not believe the structure of it now is efficient, because there is so much overlap between what the assigning attorney, the prepairing attorney does and the panel member. They duplicate each other.

Mr. BILIRAKIS. You said that, right.

Well I know that the chairman is very greatly concerned about that area because of the slowness of the process, and we have got to look into that a little more. But I do feel very strongly that these people do exercise just as significant a position as the ALJ's, in my

opinion. I used to work with the old Federal Power Commission, and they were called examiners back in those days, but I have a pretty good familiarity with what their ALJ's responsibility is and also with our Board of Veterans' Appeals.

My time is about to run out. DIC. I caught Colonel Rosenbleeth's comments regarding that particular area. I feel very strongly about that. I have introduced legislation. We are talking about people.

I speak this coming Saturday morning before the—I guess it is the national meeting of military widows, and I had hoped that I would be able to give them some positive news, some more optimistic news, and maybe I can, I don't know. I will have to talk to the chairman to see what his feeling is regarding that legislation, if he has a position on it. I do think that we should be concerned. Abraham Lincoln said something about not only the military person but also his widow, so we should be concerned with all that.

Well, having said all of those things, and I guess most of them were somewhat self-serving, but I appreciate your testimony, gentlemen.

Thank you, Mr. Chairman.

Mr. SLATTERY [presiding]. Thank you, Mike.

Do other members of the committee have any questions?

Let me just assure the witnesses that it is the chairman's intention to move forward with legislation dealing with increasing benefits to the Congressional Medal of Honor winners, and we are going to try and do that as quickly as we can. I don't know exactly what form it is going to take, but there will be an increase in those benefits approved, hopefully, by this committee before we adjourn this year. But I just wanted to assure you of the chairman's intention in this area.

Let me reiterate though, you know, everybody complains about the deficit, and I am one of those that has done that, and even though we are an authorizing committee, we have to pay our bills around here, and I am going to be pretty firm in that commitment, and I think we can do that.

We can find a million dollars or we can find the money that we need to meet these responsibilities that we have, and, whether we like it or not, the Budget Committee gives us a certain amount of money to work with, and we have to meet our needs in this committee's jurisdiction with that money that the Budget Committee authorizes for us. If we except other committee to do the same, we are going to have to do the same. I mean that is my charge, and I intend to try and meet that responsibility.

Does the gentleman from Florida have any questions?

Mr. STEARNS. Mr. Chairman, I just want to commend you for your statement. That is why I am also here, to support H.R. 1796, and I think certainly we can find the money for this type of legislation. You and I both know that there is enough out there that you could support this bill. So I commend you for it, and I and other colleagues want to go forward with this bill.

Mr. BERNARD Mr. Chairman, if I may.

Mr. SLATTERY. Yes?

Mr. BERNARD I would like to commend you personally, and I will work with you; we will work with you.

Mr. SLATTERY. Okay. Well, I appreciate that, Mr. Bernard, and, like I said, don't know exactly what form this will take, but we recognize that there need to be some changes made here. As the chairman, I am committed to try and make some changes that we can get through not only this subcommittee but the full committee and through the House and through the Senate, and I don't know exactly what form that will take, but we are going to make some changes in this area. So I appreciate your help.

Mr. STENGER. Mr. Chairman.

Mr. SLATTERY. Yes?

Mr. STENGER. I failed to comment on the restoration of the DIC. The American Ex-Prisoners of War support option two. We believe that it should be supported on the merits. I think there is money saved. If widows know that they have an opportunity to marry and not lose that pension forever, they may be more willing to take a risk on marriage. Right now, some are holding back because they will lose that pension.

Mr. SLATTERY. Yes. The problem we have had is, based on the information that I have that, over 5 years, if we completely restored the DIC benefit to these widows, the cost would be somewhere in the neighborhood of $500 million over 5 years, and I don't know where in the world I can find $500 million in this zero sum game that we are playing.

So what we have sort of fallen back to is trying to figure out if there is a way to try and make sure that the widows that don't have adequate income can be assured of some sort of restoration of benefits on a needs basis, and I know that is a concept that some groups aren't too wild about, but, there again, sometimes I don't have choices that I would like to exercise either. So I have to do the best I can to try and meet the greatest number of legitimate needs out there. So we may have to move toward sort of means test on the restoration issue, as distasteful as that may be to some of us, butt the option may be to do nothing, and I don't think we should get into a situation where we let perfect become the enemy of the good in some of these changes either.

So I thank you all for your testimony today, and I appreciate your help.

Mr. SLATTERY. I would now call to the witness stand the next panel: Mr. Thomas Miller, who is director of governmental relations for the Blinded Veterans of America; Rose Lee, who is legislative director of Gold Star Wives; and Mr. Bob Manhan, the assistant director, National Legislative Service; and Mr. George Estry, both with the VFW; and Mr. Joseph Violante, legislative counsel of the Disabled American Veterans.

I welcome you all to the witness table today.

I will first recognize Rose Lee, the legislative director of the Gold Star Wives.

Rose, welcome it is good to see you again.

STATEMENTS OF ROSE LEE, LEGISLATIVE DIRECTOR, GOLD STAR WIVES OF AMERICA, INC.; BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, ACCOMPANIED BY GEORGE ESTRY, VETERANS OF FOREIGN WARS; THOMAS H. MILLER, DIRECTOR, GOVERNMENTAL RELATIONS, BLINDED VETERANS OF AMERICA; AND JOSEPH A. VIOLANTE, LEGISLATIVE COUNSEL, DISABLED AMERICAN VETERANS

STATEMENT OF ROSE LEE

Ms. LEE. Thank you. Thank you very much, Mr. Slattery and members of the committee. I am really happy to be here. Unfortunately, our legislative committee member, Maggie Peterson, had an unfortunate situation. She was rushed to the hospital this morning at 2 a.m., so that is why I am here in place of her.

Mr. SLATTERY. I hope she will be okay. I hope it wasn't too serious.

Ms. LEE. I hope so too. Well, I don't know. She has hemorrhaged, and so I don't know just how serious it is.

Mr. SLATTERY. We are sorry to hear about that, and I am sure that other members of the panel and the committee share my regrets in hearing this news, but our thoughts and prayers are with her.

Ms. LEE. Thank you for those comments, and I will relay them on to her.

Mr. Chairman, on behalf of the members of the Gold Star Wives of America, thank you for the invitation to present some our views concerning the cost-of-living allowance adjustment to the DIC program as contained in H.R. 2341 and to discuss the three proposed alternatives to full reinstatement of DIC after termination of remarriage.

I wish to thank you, Mr. Chairman and members of the committee, for all the hard work that you have done for Gold Star Wives over the years; we really do appreciate it. But we are also aware of the often mentioned budget constraints. We want to do our part, we really want to do our part, as long as we are treated the same as others, the same across the Board.

Our submitted statement was not meant to be adversarial or contentious. However, thousands of widows are suffering immediate and irreparable harm as a result of recent legislation. We are here to tell you that military widows are thinking—what they are thinking and feeling. They are livid.

As you know, we presented a petition to the Congress to treat all Gold Star Wives alike. We oppose the two-tier system that treats killed-in-action widows less than widows of disabled veterans. We Gold Star Wives want to work with the Congress to preserve, protect, and defend our husbands' legacies, but the concerns of military widows must be heard before we can work together to correct recent injustices.

We suffered the first injustice in 1990 when we lost our right to reinstatement of benefits upon termination of a remarriage. In 1992, the DIC Reform Act modified the program to pay one basic level of benefits to all spouses regardless of the soldier's years of service or level of earnings.

In combination with the lost reinstatement benefits, the effect of the Reform Act is to provide merely alimony just above the poverty level no matter what the soldier's rank or earnings.

The proposed COLA bill will impose a third injustice because it is designed to impose the DIC Reform Act upon the 80,000 widows who were supposedly grandfathered into the old law. These 80,000 widows are not similarly situated with new widows because they had only $10,000 to $50,000 military life insurance benefits available to them compared with the $200,000 available to those widows now. We would prefer the same COLA be given to all widows.

Now addressing the bar to reinstatement after remarriage: Soldiers' widows are the only class of widows in the Federal system who permanently lost all benefits if they remarried. Every other class of Federal widows not only has the right to reinstated benefits upon termination of a remarriage but experiences no interruption in benefits if they remarry after the ages of 50 to 60, depending upon the Federal program. The blatant discrimination against our class of widows is particularly invidious given the soldiers' inherently hazardous duty and given the young ages of many of those killed and widowed.

The bar of reinstatement of benefits devastated those whose remarriages terminate after October 31, 1990, the effective date of the remarriage bar. The unfairness is not limited to those whose remarriages have terminated. The VA has never officially advised all remarried widows of the bar. Remarried widows continue to make estate planning decisions in reliance of expected reinstated DIC benefits. Hapless widows continue to remarry in reliance of the reinstatement, and those of us who are aware of the bar cannot remarry unless we remarry for money. This is not the legacy promised to our husbands.

We believe that full reinstatement of remarriage benefits is the only responsible corrective action. If fully informed of the bar to reinstatement, widows will not continue to remarry in the numbers that they have over the last 20 years and the agency's planned savings will never materialize.

There is a far more important reason, however, to reinstate benefits fully upon termination of a remarriage. DIC benefits were not and are not intended as a support replacement only, they were and are intended as an indemnification measure as well. For that reason, the name of the program is and has been Dependency and Indemnity Compensation.

If our husbands lives were similarly taken under civilian circumstances, indemnification would have necessarily included recovery of not only support loss but recovery for pain and suffering, loss of consortium, and punitive damages. We had no such right or claim under the circumstances of our husbands' death occurring as they did on active duty. Such claims were foreclosed by the Feres doctrine.

The basic lack of understanding of the indemnification concept has spawned the erroneous attitude that we are wards of the Government until such time as we remarry, when financial responsibility for us will be transferred to a subsequent spouse. This attitude demeans widows and undermines the sacrifices we made to our country when our husbands were killed.

Finally, the three alternatives to full reinstatement are inappropriate because they too ignore completely the indemnification aspect of the DIC program. Detailed analysis of each of the proposals is contained in our submitted statement.

Gold Star Wives, however, would, in effect, give support to the combination of proposals two and three, dollar-for-dollar offset proposal and the one-third to one-half DIC for remarried widows, which amounts to $250 to $375.

In closing, it has been said, death comes like a thief in the night, but death on active duty comes at all hours, and this Congress clearly anticipated when it sent our soldiers into harm's way the resulting and urgent moral imperative, as Lincoln declared and as Mr. Bilirakis also mentioned, to take care of him who shall have borne the battle and for his widow and his orphan.

Thank you very much, Mr. Chairman and members of the committee.

[The prepared statement of Gold Star Wives of America p. 114.]

Mr. SLATTERY. Thank you, Rose Lee. As always, we appreciate your testimony and your comments and look forward to working with you on this legislation, and hopefully we can get something agreed upon this year that will address this problem that you know that I am very concerned about and would like to figure out how we can fix.

Ms. LEE. Yes, and I do recognize that it was you who opened the door on this issue for us on the bar of reinstatement of remarriage, and we do really appreciate that, Mr. Chairman. Thank you.

Mr. SLATTERY. Work with me if you can as we try to figure out how we can address, this and pay for it, unfortunately.

Ms. LEE. I hear you.

Mr. SLATTERY. That is the thing we are trying to do.

Ms. LEE. We will work together. Thank you.

Mr. SLATTERY. And give Maggie our best too, okay?

Ms. LEE. I will. Thank you.

Mr. SLATTERY. Mr. Manhan.

STATEMENT OF BOB MANHAN

Mr. MANHAN. Thank you very much, Mr. Chairman. It is my pleasure to represent the Veterans of Foreign Wars before this authorizing subcommittee today.

I will address the bills in chronological order.

VFW certainly strongly supports H.R. 1796 to increase the special pension of Medal of Honor winners. VFW certainly supports H.R. 2341, a proposed 3 percent cost-of-living allowance for certain recipients of VA service-connected disabilities payments.

The VFW does not support H.R. 3240 which would propose to change the salaries and the tenure of selected members of the Board of Veterans' Appeals primarily because we do not know the position the Secretary of the Department of Veterans Affairs will be. Hence the VFW prefers not to micromanage his BVA employees. We are also very concerned, as you are, and many of the other committee members regarding where this additional money will come from? And we certainly would be unhappy if it were to be a dollar-for-dollar offset from any other veteran entitlement.

Now I will address the unnumbered draft bill entitled "Veterans' Appeals Improvement Act of 1993." In order to be brief, I will present the issues that the VFW is most concerned with. However, I want to acknowledge there are many good things in this bill, too.

First of all, we have questions about Section 2 entitled "Composition of the BVA." We think because we are supporting the single panel choices it is not necessary to allow the chairman to appoint more than one outside Department member. In Section 3 entitled "Assignment of Matters Before the Board," we would strongly like the following sentence to be deleted: "Any such assignment by the chairman may not be reviewed by any other official or court, whether by action in the nature of mandamus or otherwise."

Mr. Tejeda had asked that question of Chairman Cragin, and I heard the chairman's response. Therefore, the VFW is right in saying let's strike this sentence.

Section 4, "Determination by the Board:" I would just like to remind this subcommittee and perhaps the BVA itself, we should put something in there that clearly states the chairman, BVA, is bound by that body of evolving veteran law that is being made by the Court of Veterans Appeals. The BVA is not the pinnacle of the appellate process any more.

Section 7, "Medical Opinions:" The VFW strongly enforces an independent medical review of the evidence. The primary reason for this, is that if you go outside the VA's pool of physician employees, we not only get licensed medical doctors, we have Board-certified medical doctors who are also practitioners in their respective specialities. We suggest that a veteran will get a better shake from somebody who really rolls up his sleeves and knows the disability under review rather than a doctor who may have been out of practice many, many years or one who hadn't practiced in the specialty at all. Also, CVA requires an independent medical review.

Lastly, Section 10, entitled "Effective Dates of Awards Based on Difference of Opinion." We very much like the idea that the chairman, vice chairman, and deputy chairman, may want to open up veterans' files on their own initiative and reinstate an entitlement that was lost for whatever reason. However, we absolutely insist that full compensation be paid to the the veteran. This is the proper and equitable thing to do.

That summarizes our position, Mr. Chairman. We would be glad to respond to any questions. Thank you.

[The prepared statement of Mr. Manhan appears at p. 121.]

Mr. SLATTERY. Okay.

Mr. Miller.

STATEMENT OF THOMAS H. MILLER

Mr. MILLER. Yes, sir. Good morning, Mr. Chairman and members of the subcommittee.

On behalf of the Blinded Veterans Association, I want to thank you for the invitation to present our views this morning on the pending legislation, H.R. 2341 and H.R. 1796, and the draft legislation, the Veterans' Appeals Improvement Act presented to the Congress by Secretary Brown, and also to comment on several concepts which you sent out in an effort to respond to the reinstatement of certain DIC or surviving spouses.

I would like to commend you for holding this hearing and particularly on your tenacity to deal with the two latter issues, the problems with the adjudication and appeals situation with the VA and also with the reinstatement rights. These are both very difficult issues, as has been clearly outlined by many of the witnesses and committee members both from a procedural manner, controversial in that sense, but also where the money is going to come from to offset the expense of some of these needed improvements.

Regarding H.R. 2341, the Compensation Rates Amendments of 1993, BVA strongly supports quick passage of this legislation and have outlined in much detail in past years the reasons why this is so important, particularly to severely disabled veterans and their families.

I was going to make a comment about how extremely disturbed BVA was following the reconciliation process this year which resulted in certain DIC recipients receiving only a half a COLA in fiscal year 1994 but was very pleased to hear your opening comments indicating that you were on the verge of introducing legislation to hopefully correct that inequity, and if we can be of any help in support of that, we certainly would be more than happy to do that.

BVA also very strongly supports enactment of H.R. 1796, the special pension increase for Congressional Medal of Honor winners. The statements made by two of the witnesses in the first panel, Mr. Peluso and Mr. Bernard, were most eloquent, and I don't believe there is anything I could add to support their arguments in behalf of passage of that legislation.

Regarding the draft bill submitted to the the Speaker by Secretary Brown, BVA certainly agrees with the Secretary's conclusion that there is a need for improvement and clarification of certain adjudication and appeals procedures related to claims for benefits under the laws administered by the VA, and hopefully as a result of those improvements and clarification it would result in a reversal of the trends that are showing a decrease in productivity and an increase in response time.

However, we disagree strongly with several of the provisions of that draft bill which, in our view, appear to attempt to make improvements at the expense of veterans' rights and erosion of the judicial review process. Specifically, we take exception to Sections 3 and 4 which eliminate the right to appeal decisions. We concur with the VFW on their comments related to Section 7 regarding independent medical opinion and also with Section 10, denial of full retroactive pay based on allowances made for differences of opinion.

Finally, Mr. Chairman, regarding your three concepts, BVA, along with Rose Lee and the Gold Star Wives, supports full restoration or reinstatement rights to the DIC rolls. In light of all the comments made, we certainly recognize that that may not be the most realistic solution to this problem in light of our fiscal problems confronting the Nation.

But of the three concepts that are presented, the first, short duration marriage, we have a problem because we feel that is very arbitrary and would eliminate a substantial number of eligibles. We are opposed to the second solution because of means testing and a needs-based approach. And I think, finally, if we had to sup-

port any of the three, we would be more supportive of the third approach with a percentage of the benefit which would be more equitable, in our view. Unfortunately, we have no recommendations of where those dollars would come from.

That concludes my statement, Mr. Chairman, and of course I would be willing to answer any questions you might have.

[The prepared statement of Mr. Miller appears at p. 123.]

Mr. SLATTERY. Thank you, Mr. Miller. We appreciate your testimony today, as always.

Mr. Violante.

STATEMENT OF JOSEPH A. VIOLANTE

Mr. VIOLANTE. Thank you, Mr. Chairman, members of the subcommittee. On behalf of the Disabled American Veterans and its Women's Auxiliary, may I say that we appreciate this opportunity to present our views today.

Mr. Chairman, H.R. 2341 was introduced by yourself and proposes a 3 percent across-the-board upward adjustment in VA service-connected disability and death compensation benefit rates. The DAV supports favorable consideration of this bill.

H.R. 1796 will increase the special pension authorized to recipients of the Medal of Honor to $500 per month. The DAV recommends the subcommittee's immediate and favorable action on this bill.

Mr. Chairman, VA's draft bill would amend Title 38, United States Code, to improve the appeals process relating to VA claims. DAV supports the concept of improving this process. I went into great detail in our comments on each of the sections. I will briefly discuss our concerns here.

Under Section 3, DAV is extremely concerned with the language used in this proposed change, specifically that, "The chairman may determine any matter before the Board." The phrase is extremely broad and could have serious ramifications. Therefore, as written, DAV Is opposed to this provision.

We strongly support the concept of single Board member decisions. It is our sincere desire that the concept of single member Board decisions could be quickly enacted into law.

In Section 4, DAV opposes dismissing an appeal which fails to allege specific error of fact or law. No veteran or claimant should be denied a benefit which he or she is entitled to just because of the failure to allege a specific error of fact or law. This would make the VA's ex parte, nonadversarial proceedings too legalistic and would place the veteran in an unfair situation with too great a burden to bear.

We also oppose the provisions of this section which would allow the chairman to determine claims before the BVA.

DAV supports administrative allowances. However, we oppose that portion of the amendment which would prohibit judicial review of an administrative allowance. DAV opposes the use of BVA physicians to render medical opinions on appeals before the Board of Veterans' Appeals as proposed in Section 7.

DAV supports those provisions of Section 8, including hearings through pictures and/or voice transmission by electronic or other

means provided these types of hearings are not used to exclude the veteran from obtaining an in-person hearing if he or she so desires.

Under Section 10, DAV strongly urges changing language proposed in paragraph (0)(1). This proposed language would weaken the existing law on consideration of issues on the basis of difference of opinion.

Mr. Chairman, we are delighted to provide our views on the development of a legislative proposal that would provide relief for certain surviving spouses who were barred from reinstatement to DIC by a portion of OBRA of 1990. Quite simply, we strongly support restoration of the above-cited DIC entitlement.

The DAV has always viewed this DIC restriction as patently unfair and unwarranted. Most other Federal death annuity programs then did not and still do not contain any similar bar to reinstatement of benefits following the termination of subsequent marriages. In fact, while OBRA of 1990 was imposing these restrictions on the spouses of deceased service-connected disabled veterans, this same law in other provisions liberalized death benefit entitlement reinstatement for widows of deceased CIA employees.

We have always felt these DIC widows were singled out for unfair treatment. Every single DAV national convention since the 1990 Deficit Reduction Act has approved a resolution calling for removal of the subsequent marriage bar to DIC entitlement. Indeed, this is the official position of our organization on this matter.

Having stated that, Mr. Chairman, I will respond to your request that we comment specifically on three possible modifications.

Let me state immediately and most forcefully that the DAV would be very much opposed to the application of any type of means testing criteria to any service-connected entitlement program. Service-connected disability compensation paid to veterans and/or service-connected death benefits paid to surviving spouses and orphans of deceased veterans have never been subject to any outside income limitations.

Regarding the other possible approaches, we do recognize, given existing financial constraints and pay-as-you-go requirements, that consideration of less than full benefit restoration cannot be removed from the table.

In summation, Mr. Chairman, we appreciate your strong commitment to addressing this inequality. This concludes my statement, and I would be more than pleased to respond to any questions you may have.

[The prepared statement of Mr. Violante appears at p. 128.]

Mr. SLATTERY. Thank you, Mr. Violante.

Do members of the committee have any questions?

I have one question for Mr. Manhan.

In your written testimony and in your oral comments today, I didn't hear any mention of the DIC reinstatement proposal. Do you want to make any comments specifically on that?

Mr. MANHAN. Yes, Mr. Chairman. I would like to put the VFW on record that, of the three options you offer, we would favor course of action number three as one we could support best. That is where you propose to reinstate a certain category of DIC recipients whose second marriage terminated by divorce or death, would be reimbursed at either 30 percent or 50 percent of the normal rate. We

would like to come back and suggest maybe in markup it could go as high as 80 percent, but I don't know where the money would come from.

We did attach to our statement a copy of the VFW Resolution Number 676 in which the VFW has always supported 100 percent restoration for this category of special spouse.

Mr. SLATTERY. Okay. Thank you, Mr. Manhan.

I appreciate all of your testimony today.

Mr. Violante, I sympathize with your point about not doing any sort of means testing on some of these programs, but my concern, I guess, is a pretty simple one, and that is, if I have to play this zero sum game, which I don't like to play, but we have to play right now, then I have a choice: Either you spend the money that you have, as limited as it is, in a way that will help the people that need it most, or you don't anything, I suppose—I mean there is another option—and preserve who is going on right now, which I don't want to do.

I would like to take care of everybody, but if I can't take care of everybody then I would really ask you to think about what is wrong with acknowledging that there may be some widows out there—there are—that perhaps have been in a second marriage, and, for whatever reason, it is terminated, and they may not have any other resources. I mean they may be living right at the poverty line.

It seems to me that it only makes sense for us to try and take care of those people if we only have a limited amount of money, as opposed to trying to treat that person the same as someone who may have married someone that is a millionaire, and then that person has left them a million dollars, and they are very well taken care of for life.

I know these kinds of things are the kinds of things that nobody likes to talk about, but all I am saying is, we are borrowing money from our kids and grandkids at record levels, and we have insatiable demands in health care and all other areas of our Government budget, and we are going to have to realize that we can't treat everybody the same, it seems to me.

We are going to have to realize that if we are going to take care of some these people that desperately need to be taken care of, we may have to acknowledge that there are others that don't need, for whatever reason, some assistance from the Government, and I think it is important for all of us, in talking to our own constituents, to acknowledge that this was something that was put in law, as I understand it, in 1970, and it existed from 1970 to 1990. So the World War II veterans, the Korean War veterans, most of the Vietnam Era veterans even, they went into combat, they went to war, they served their country, not expecting to get this sort of benefit for their spouses, but it was given in 1970, taken away in 1990, and what I am trying to do is figure out how I can put part of it back and, as we put part of it back, put it back in such a way as to make sure that we don't have a situation where women in this country who were married to veterans and now are in a situation where they may be living right at the poverty line, are denied restoration of some of these benefits.

I would really challenge you to go back and think about this and get back in touch with us if you can and see if you can support some effort to do this. I don't like it, I want to emphasize that. In a perfect world I wouldn't want a means test, I like to treat everybody the same, but if I have got a limited amount of money, if I have got some people here that are very poor and I have got some over here that are very wealthy and don't need it, I don't think it makes sense to treat them both the same, okay?

I just challenge you to go back and think about that and get back with me, because I don't know how we are going to be able to address otherwise.

I mean we have this other option of treating everybody the same with a 30 percent restoration, but does that make sense? I don't know. I mean I want you all to go back and think about it and get back in touch with me. Will you do that?

Mr. VIOLANTE. Yes, Mr. Chairman, as I said, we are willing to work with this. We do have serious concerns about means testing service-connected disabilities.

Mr. SLATTERY. Yes, I understand you do, and you don't want to set a precedent; you know, you are afraid that this might open Pandora's box maybe. I understand what you are saying, and I don't want to do that either, okay? But help me sort through what we can do here.

It is good to see you all again. Thank you very much for your testimony.

Let us know how Maggie is doing too, will you, Rose?

Ms. LEE. I will. Thank you.

Mr. SLATTERY. Okay. Keep us posted. Thank you.

On the next panel we have Mr. Larry Rhea, deputy director of legislative affairs, Noncommissioned Officers Association; Mrs. Jean Arthurs, director of legislative affairs for the National Association of Military Widows; Mr. John Morrison, the associate legislative counsel, National Association for Uniformed Services and the Society of Military Widows; and Mr. Russel Mank, national legislative director of Paralyzed Veterans of America.

I welcome all of you to the witness table today. It is good to have you here.

Mr. Rhea, you are first at the table, so I will recognize you in the interests of time here.

STATEMENTS OF LARRY D. RHEA, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, NONCOMMISSIONED OFFICERS ASSOCIATION; JEAN ARTHURS, DIRECTOR, LEGISLATIVE AFFAIRS, NATIONAL ASSOCIATION OF MILITARY WIDOWS; JOHN W. MORRISON, ASSOCIATE LEGISLATIVE COUNSEL, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES, AND THE SOCIETY OF MILITARY WIDOWS; AND RUSSEL W. MANK, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

STATEMENT OF LARRY D. RHEA

Mr. RHEA. Thank you, Mr. Chairman, and good morning. I will endeavor to make my remarks brief in the interest of time.

NCOA is grateful for the invitation to testify today. Without equivocation, the Association fully supports both H.R. 1791 and H.R. 2341 for many of the reasons that have already been stated by the other witnesses here. Along these lines, the Association appreciates the efforts that you have undertaken to try to undo the bars to the DIC reinstatement that were imposed by OBRA 1990.

We have carefully considered the three options that you proposed in your letter. Let me preface the Association's comments and recommendations on these proposals by stating that we believe that any legislative remedy must treat as equals under the law all those who are impacted by OBRA 1990. In our view, we believe that equal treatment under the law is crucial to any legislative remedy.

For that reason, we basically do not support either concept one or concept two. While both concepts would remedy the problem for some, both concepts would exclude substantial numbers of others from reinstatement. Both concepts, in our view, are based on arbitrarily determined factors that would be subject to a great deal of criticism as not treating that total population as equals.

On the other hand, although not completely satisfactory in our view, concept three does treat all surviving spouses impacted by OBRA 1990 as a group. Although concept falls short of our goal of full reinstatement, we believe that the merits of concept three outweigh those of either concept one or two.

As you deliberate this extremely difficult issue, we have recommended previously to this subcommittee that full reinstatement be considered but on a one-time basis only. We would also ask that that be considered in the current deliberation, and if this is not possible, we urge the subcommittee to seek enactment of concept three at one-half the normal benefit rate.

But whatever the outcome, Mr. Chairman, the Association appreciates your courage and the initiative that you took to address this very difficult and highly emotional issue.

With regard to the the DVA proposals, to summarize briefly, we have reconsidered our position on the one-member signatures and decision on BVA cases. We will support that now. We believe that this will contribute to a win/win situation for both the DVA and the veteran.

We support removing the existing 67-member limit on the Board. It is unclear, though, how section 2(c) which deals with temporary and alternate members and those type things, how that particular section of the Veterans' proposal improves the existing law, so we believe that the current language should be retained.

We certainly are opposed to the elimination of the review of BVA decisions or rulings on assignment of matter before the Board, as proposed in Section 3. We clearly, as other folks have stated here, believe that those matters should be subject to scrutiny, and we object to those provisions in Section 4 that appear to limit the assistance provided and lessen the element of doubt accorded to veterans. We are also opposed to limiting awards based on differences of opinion to the date that the chairman or vice chairman of the BVA approves those awards. We believe that those payments should be retroactive to the date of the erroneous prior decision.

We also are very concerned about what we consider to be the overly restrictive language of Section 7 regarding the use of inde-

pendent medical opinions. We have no objection to the other provisions of the proposal. In closing, we thank you again for having us here, and by what we have offered in our prepared statement and in response to any questions that you might have, we trust that our thoughts and input will be constructive to your tough deliberations.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rhea appears at p. 138.]

Mr. SLATTERY. Okay, Mr. Rhea, thank you very much. Your comments are always constructive and helpful to us in our deliberations, and we appreciate your being here today. So thank you.

Mrs. Arthurs.

STATEMENT OF JEAN ARTHURS

Mrs. ARTHURS. Good morning. I am Jean Arthurs, president of the National Association of Military Widows, and we thank you for inviting us to provide testimony here today. We really appreciate this committee's concern for the DIC widows whose husbands have given their lives in service to our country.

We support H.R. 2341 which would provide a 3 percent cost-of-living adjustment in rates of service-connected disability compensation and the rates of DIC compensation.

In the last 3 years, some of our widows have become destitute, filled with rage, and in a panic over becoming financial victims of the OBRA 1990 law which terminated the guarantee of reinstatement if they remarried and then lost their second or subsequent spouse due to death or divorce. These widows trusted their futures to the the the statutory commitment made by Congress in 1970.

There was a dual objective in the 1970 law to motivate DIC widows to remarry, removing them from the DIC roles and thus saving the Government significant sums of money and also to bring veterans' benefits more in line with the remarriage provisions of other Federal programs.

On page 2 of my written statement is a chart which shows the current Federal survivor programs and how the programs are affected by remarriage and by termination of a second or subsequent marriage. The VA's dependency and indemnity compensation is the only program that does not reinstate benefits when a subsequent marriage ends.

Congress terminated the DIC reinstatement effective November 1, 1990, and without any kind of notice the remarriage benefits were withdrawn from the DIC widows. This was very unfair.

We have been asked to respond to the following three proposals: Proposal one, to provide reinstatement of VA benefits for the unmarried surviving spouse whose disqualifying marriage was only of a short duration such as 1 or to 2 years.

Our response is that the law allowing remarriage was in effect for over 20 years, and confining the reinstatement to such a short period of 1 or 2 years would be unfair to those who have relied on the statute in forming their estate plans for 20 years ago. This approach equates to discrimination among categories of DIC widows.

The number two proposal would provide for the payment of a $750 monthly rate, and it would be subject to the the offset of each dollar of outside income received. We believe Congress showed com-

passion last year for those who initiateded divorce proceedings before November 1, 1990, and later finalized the divorce. These widows were awarded the full benefit and were not encumbered with a prohibitive means test.

This number two proposal would subject this latter group to an unfair means test, thus indicating that perhaps they are not as worthy as the previous group when actually, in fact, they had saved the Government money by being married and off the DIC roles for a long time. Again, this equated to discrimination within the categories of DIC widows.

The number three proposal to provide for the reinstatement of VA benefits for the unremarried surviving spouse but at one-third or one-half the normal rate of compensation, is this saying that some widows' lives are worth one-third or one-half the value of other DIC widows' lives?

This proposal cannot be considered as it penalizes these widows in a monetary way and is unequitable and discriminating to the the widows through no fault of their own. Rather, it is the callous mistake of OBRA 1990.

Our belief is that this issue of DIC reinstatement is not a monetary determination. Surely this Congress has feeling to realize that these widows have suffered enough with the death of their servicemen and now, combined with the last 3 years of limitations imposed on the DIC widows As a moral issue, it is time to give these widows back their rightful DIC compensation.

Last year, the Congress changed the formula for DIC compensation to the the flat rate payment system, and an additional allocation of $165 per month was awarded to the the survivors of veterans rated totally disabled for a continuous period of 8 years preceding death. We are extremely disappointed that H.R. 5008 did not include the additional disability credit for the spouses of servicemen who die on active duty.

Surely the media pictures of our tortured dead in Somalia bring forth a realization that it is unfair to equate death. Our Association joins the argument that an active duty death constitutes the ultimate total disability and it should be recognized by the additional monthly payment equal to the the current rate of total disability or $165 per month.

By equating discrimination among categories of DIC widows, Congress is negating the 14th amendment which guarantees equal justice for all.

Thank you. I certainly appreciate being here, and if you have any questions, we will be glad to answer them.

[The prepared statement of Mrs. Arthurs, with attachments, appears at p. 146.]

Mr. SLATTERY. Thank you, Mrs. Arthurs. We appreciate your testimony also.

Mr. Morrison.

STATEMENT OF JOHN W. MORRISON

Mr. MORRISON. Mr. Chairman and members of the subcommittee, I welcome the opportunity to summarize the written testimony of the National Association for Uniformed Services and the Society of Military Widows.

We support H.R. 1796 which proposes to increase the rate of the special pension of Medal of Honor winners from $200 to $500 per month. We thank Mr. Spence and Mr. McNulty for introducing it and the chairman for scheduling it at this hearing.

We hold Medal of Honor winners in the highest regard. Their special pension should be as financially rewarding as that of American sports heroes, but we realize in today's environment of budget constraints that this is not feasible. However, there can be few better uses of Government funds than to reward military personnel for their extraordinary bravery, gallantry, and self-sacrifice above and beyond the call of duty.

We also support H.R. 2341 which would, effective December 1, 1993, provide a 3 percent cost-of-living adjustment in the rates of compensation payable to service-connected disabled veterans and recipients of dependency and indemnity compensation. This COLA increase, which is the same adjustment expected for Social Security recipients and veterans' pensions, will help to maintain the purchasing power of their benefit and protect the recipients, who in many cases are already living on the margin, from the ravages of inflation.

It is truly unfortunate that inflation cannot be prevented for if it were so, there would be no need for COLA's to protect the purchasing power of Government benefits regardless of whether the entitlement is a Department of Veterans Affairs survivors benefit, disability compensation, pension, or retirement benefit that was earned as part of a compensation package.

Mr. Chairman, we very much appreciate your personal concern and this subcommittee' strong commitment to provide legislative relief for surviving spouses who were barred from reinstatement to DIC roles by a harsh provision of the Omnibus Budget Reconciliation Act of 1990 which was passed without public hearing or input.

OBRA was particularly devastating because of the retroactive provisions that impacted adversely upon surviving spouses, especially those widows who had remarried and with their new husband made insurance and estate plans based on the Government's promise that DIC was reinstatable. Many of these widows are now in their seventies and eighties, and, because of their husband's age or medical condition, they are precluded from purchasing affordable life insurance or making alternate estate plans.

OBRA is devastating because these widows have lost control over lives, their welfare, and dignity, and now are at the mercy of Government budgeteers who have betrayed them.

The widows we represent are grateful that within Congress there are still those who care about them and their welfare. They appreciate what this subcommittee is doing and understand for the present any legislative remedy that may result will be subject to the the availability of funds.

We have considered the three concepts presented by Mr. Slattery. We recommend that the Congress provide for the reinstatement to VA benefits of an unremarried spouse at one-half of the normal benefit rate for 1994 and at the full normal benefit rate for 1995 and beyond. The 26 associations that are members of the Military Coalition agree with this position.

Anything less for this relatively small and defenceless group of survivors would perpetuate the breach of faith which Government budgeteers created when they included retroactive provision within OBRA.

This concludes my summary of our written testimony which discusses these issues in greater detail, and also addresses our concerns regarding certain sections of the Veterans' Appeals Improvement Act of 1993 as proposed by the Secretary of Veterans Affairs.

In closing, Mr. Chairman, NAUS and SMW thank you for providing this opportunity to testify before this panel.

[The prepared statement of Mr. Morrison appears at p. 158.]

Mr. SLATTERY. Thank you, Mr. Morrison.

Mr. Mank.

STATEMENT OF RUSSELL W. MANK

Mr. MANK. Mr. Chairman, members of the subcommittee, the Paralyzed Veterans of America appreciate this opportunity to testify before this subcommittee.

Paralyzed Veterans of America unequivocally support H.R. 2341 and H.R. 1796. The disabled veterans of America and their survivors certainly deserve the COLA.

No group of Americans are more deserving of a pension increase than the Congressional Medal of Honor winners. They have earned an increase from $200 to $500, and we strongly support that measure.

Mr. Chairman, the problems of surviving spouses barred from DIC benefit reinstatement due to a disqualifying marriage are shared by the Paralyzed Veterans of America. The solution to this problem is not easy. Each time we create an exception to the basic disqualification, we raise the specter of equally deserving individuals who do not meet the exception. PVA believes strongly that more careful and thoughtful consideration is mandated before we craft further legislation in this area.

If we had to choose from the chairman's three options, we would choose selection number three, but we would look at 50 percent as certainly a starting point for reimbursing these widows.

Finally, I would like to address the draft adjudication bill. Paralyzed Veterans of America must point out that the legislation proposed by the Department of Veterans Affairs does not address the pressing problems of the VA's regional office adjudication process, and therefore we look forward to Congressman Lane Evans' proposed legislation.

For my remaining time, I would like to address just one particular part of the bill, Mr. Chairman, and that is, the Paralyzed Veterans of America are still opposed to one-person Boards. We are strongly in disagreement with that proposal. We have pointed out previously that only 5 percent of the Board's decisions come to the Court of Veterans Appeals. For 95 percent of the veterans who are dissatisfied with the VA's initial adjudication of their benefits claims, review by the Board of Veterans' Appeals is their final appeal, and the Board is the ultimate arbiter of their claims. Consequently, it is critical that the Board's review be as full and fair as possible.

We believe that a single-member Board decision is appropriate only if the Board decision orders a remand of the claim to a lower level of the VA for the proper action or if the Board allows the benefits sought. However, PVA continues to adamantly oppose any reduction in the panel size in cases in which the relief sought by the veteran is denied.

We continue to believe that, prior to the final denial of benefits, veterans are entitled to retain the due process protections they have enjoyed for over 60 years, a thorough and independent review of their claim by three of VA's most knowledgeable persons regarding benefit claims.

PVA does, however, offer a compromise. Our compromise would mean, given the most recent Board statistics, that a single member could decide 66 percent of all cases appealed to the Board, leaving only 33 percent of the Board's cases to be decided by three members. This plan would permit time savings contemplated by a reduction in Board size in the vast majority of the cases while preserving for the veterans who would adversely affected their right to the same complete and thorough review they enjoy now.

Mr. Chairman, the rest of the points I made are in my written statement, and I would be glad to answer any questions. Thank you for holding this hearing.

[The prepared statement of Mr. Mank appears at p. 163.]

Mr. SLATTERY. Thank you, Mr. Mank, very much, and I appreciate the testimony of all the panelists here today, not only of this group but the previous groups.

Let me just make an observation, and I am going to ask you all to think about this a little bit too as we deal with this zero sum game that I keep talking about. I wish and hope that I can figure out a way to restore the DIC benefits to all the widows out there, but what all of you are coming in and telling me, which is hard for many to understand, frankly, is that you want me to treat all of these widows basically the same, regardless of their income situation, regardless of the duration of their second marriages.

I mean we are creating a situation here where someone could have been married to a person for 50 years and maybe married to a veteran for 6 months, and that person will be treated the same way as the person that was married to the veteran for 50 years and married to a second person for 6 months. Do you see what I am saying? I mean you are asking me to treat those people the same way, regardless of income also, when we deal with this restoration issue.

All I am asking you all is to think anew about this a little bit because it doesn't make a lot of sense to me that we are—you are going to tell me, when I have this limited amount of money, if I can find it some place else in the VA budget, that I should splash this money around on everybody equally, regardless of their need. I mean I don't understand this, and please help me understand it.

If I have a widow that is out there right now trying to get by after she loses her second spouse, and maybe she is trying to get by on $500 a month, the Social Security minimum payment, and you all are telling me I should treat her the same way as I would this widow that maybe inherited a million dollars from her second

husband. I mean that doesn't make any sense to me, especially when I am limited in terms of the amount of money that I have.

I know that we are talking about changing things and it is a different approach to this sort of a problem, but please help me understand why I should treat the destitute widow that has been married to someone for 6 months and has lost all of her benefits as a result of this remarriage—why I should treat her the same as I should the widow that inherited a fortune from a second marriage that was for a duration of 50 years. Help me understand this. Can anybody?

Mrs. ARTHURS. Well, since you have asked, I will elaborate a bit for you.

In the first place, if this country cannot support these widows adequately, I think it is time for them to quit giving all of our money to Russia and everybody else and take care of these people. After all, this is a moral issue. I hate to have you sit here and discuss it as a little money situation.

Mr. SLATTERY. Yes, I hate to do that too, Mrs. Arthurs, I really do, and my heart is with you in terms of—you know, I don't vote for much foreign aid, okay? Just so you understand. But the money gets spent, okay? And my charge as chairman of this subcommittee is, I am given X amount of money to work with. This committee is given X amount of money to work with by the Budget Committee.

Now what I have to do is take the limited resources that this committee has and try my level best to take care of as many veterans and widows as I possibly can to the best of my ability, and, granted, I would like to have a lot more money, but I don't have my more money, okay? And what I have to work with is, I have to take from Peter to pay Paul almost here. I mean that is the reality that I am dealing with.

Do I like this? No I do not, Ma'am. I want you to understand, I do not like it. I am just trying to explain to you what my reality is and what my limitations are as chairman of this subcommittee, and as the chairman of the full committee has to deal with also, and I am trying my level best to figure out can I make these programs better with the resources that we have.

Granted, I would like to have more resources, but this year I do not have more resources, so what I am trying to do is see if there is a way for us to spend the resources that we have in a way that will enable us to take care of more widows, more veterans, in a more equitable, just manner. That is the problem that we are dealing with, and I need for all of your organizations to acknowledge this limitation that we are dealing with, recognizing that none of us like it, okay? But that is just the reality that we are dealing with. Then we have to slug our way through what the options are after we accept that reality.

I mean I could have not done anything, you know, and just sort of said, "This is terrible and it is a terrible injustice, and I hope somebody in the future deals with it," okay? I have elected not elected not to do that.

Mrs. ARTHURS. Well, we are very grateful that you did bring it up, but my thought on this is that possibly it is time to reevaluate some of our resources and how we are spending that money.

Mr. SLATTERY. I agree with that, and we will do that next year with the budget process.

Mrs. ARTHURS. Without asking Mr. Brizzi up there, I am a lit reluctant to bring this up, but someone said to me a short time ago that perhaps we should check out this—or are you familiar with this Operation Death Match where they have found over $6.7 million that they have been sending to dead people that haven't been around for a number of years—something such as that? Apparently there is enough waste in this Government.

I am sorry, sir, I don't think I am helping you any, because I just don't think—I consider this a moral issue, and I have for 20 years. Perhaps age is taking its toll.

Mr. SLATTERY. No, I am sure it is not.

Mrs. ARTHURS. I hope not.

Mr. SLATTERY. It is just that, you know, these are tough choices that we have to make.

Mrs. ARTHURS. It is tough, but this country had better take care of these widows, is my opinion.

Mr. SLATTERY. I agree with you, and I am trying my best to figure out how in the world to do that. If I have to prioritize, Mrs. Arthurs, what I am saying is that I will take care of the poor ones—I would like to take care of the poor ones first. That is what I am saying to you, okay? Then, if there are more resources left over after we take care of the poor ones that have gotten, for whatever reason, into marriages that lasted a short period of time—the worst situation that has been brought to my attention is where a woman that maybe is 60 years old and was married to a veteran for 35 or 40 years, gets remarried, and she thinks she has found love, and, the first thing you know, this second husband is not being good to her, beating her or whatever, and she needs to get out of the marriage, and she doesn't have any resources, and she finds that if she goes back and divorces this second person, that she is denied access to these benefits, and she has nothing else to do except live with maybe a person that is beating her or go without benefits.

All I am saying is, that is the kind of thing I want to try and deal with, and that is an entirely different situation than someone who was married to a G.I. for 6 months or 8 months or a year and lost him in combat, as terrible as that was, but she got remarried and maybe was married for 40 years to somebody, and that person took very good good care of her, you know, and they had a wonderful marriage, and she is left in very good condition because of their joint efforts. That person is in a different situation than the person I just described.

I know that you all don't like to make those kinds of choices, but when we are dealing with tough, limited budgets, I have got to make those kinds of choices or I don't get anything done.

I am sharing with you a little bit of my frustration in terms of, you know, I would like to be able to take care of everybody and treat everybody the same, but I am telling you that I don't believe that I am going to be able to do that, and I am trying to more clearly understand why someone would ask me to treat everybody the same when they are not the same.

Mrs. ARTHURS. Well, you know, when you talk about a means test, I have been a widow for 25 years, and a means test for a minimum income widow is something that haunts these widows terribly. Some of them receive as much as five dollars a month. I have to encourage them to hang on to that five dollars. I say, "Don't throw it back to the VA, keep it; it ensures other benefits for you."

But the sound of a means test—widows have had a tough enough time. Goodness, do we have to resort to a means test? It is very depressing. Psychologically, it is terrible.

Mr. SLATTERY. I understand what you are saying, and I guess what I am looking at right now is that these widows that have remarried now are in a situation, because of OBRA 1990, where they don't get anything restored. That is the reality right now, if we do nothing, which to me is very, very harsh, and I am trying to change it. But as I change it, I have very limited resources, and if I can't take care of everybody and restore it all as it was between 1970 and 1990, then I have to make some choices, is what I am saying, and I am trying to target this limited amount of money in a way that will help me take care of the largest number of most needy widows.

Mrs. ARTHURS. Well, you know, I question the figures on the number of widows and the cost that was projected here today. I work with widows all the time, and I don't think there are that many. I don't think you are talking about that many widows to be back on the roll. I think maybe at the most there might be 2,000 over the 3-year period. I have heard that statistic somewhere.

Mr. SLATTERY. We will look at all these numbers. These are not numbers that I manufacture, okay? These are numbers that I get from———

Mrs. ARTHURS. No, but I don't think you are looking at something that is that expensive, and I think in fairness to these widows we had better check this out and get the right figures on it.

Mr. SLATTERY. Okay. We will certainly do that, and I have to rely upon other Government agencies to provide me with this information. I mean I just don't dream it up, just so you understand. We get the best information we can, and CBO has to approve it ultimately, and so we go through the process here.

I appreciate your help today and your comments. I don't mean to put you on the spot, Mrs. Arthurs.

Mrs. ARTHURS. Oh, don't worry about that. I am just glad to be here.

Mr. SLATTERY. Okay.

Mike?

Mr. BILIRAKIS. I just want to reinforce what the chairman has told us. It takes a lot of courage on his part, honestly. I am sure you all agree, it takes a lot of courage on his part to communicate what he has.

Mrs. ARTHURS. I appreciate that, I really do, and we hope to work with him on this.

Mr. BILIRAKIS. You know how I feel, Mrs. Arthurs? I introduced the legislation.

I can't help but think back. Some things happen over a lifetime, and they sort of stick with you. I remember long before I ever thought of running for Congress or for any elected office, back in

the early seventies, attending a social meeting and sitting next to this banker, the wealthiest banker, probably the wealthiest person in our entire area, listed on these Fortune 500 lists now, kind of boasting to me how he had been receiving Social Security since such and such a time.

You know, every time Congress mentions something about means tests on Social Security, my gosh, there is an avalanche of complaints.

Now he had been receiving Social Security for a number of years before the early seventies, which means that his contribution, not like it is today, his contributions had been considerably less. Chances are, he had probably already received his contribution and then some. That was 20 years ago, so God knows, he has received a heck of a lot more than he ever contributed into it. But he is still taking it. It makes you wonder, was Social Security designed for that kind of an individual, or was it designed for the people who would really have to depend upon it? I guess we have the same thing here. In a sense we have the same thing here.

In my opinion, Mrs. Arthurs, and when you talk about the Federal programs, and this is the only Federal program that is treated this way, you are quite right. I use that argument all the time. But the argument has been made that these other Federal programs you mentioned are contributory; in other words, people have contributed to it, they have not contributed to DIC.

Well, in my opinion, you widows have contributed a hell of a lot more to DIC than any of those other people; they have contributed a few dollars, you have contributed; God knows you have contributed. You say you have been a widow for 25 years, and your contribution and of course your spouse's contribution is greatly in excess of that.

That is why I feel as strongly as I do about these things, and I would parry that kind of an argument very, very readily.

But I guess the chairman is really referring to the real world, and I know if we were in your position, basically representing your organizations, we would say the same thing that you do. But he is talking about the real world. It is like we have health care right now and basically one school of thought is all or nothing. Well, God knows we need a reform of health care badly. Should it ever be an "all or nothing" type of position, or shouldn't we be trying to help people right now regarding some of the noncontroversial areas, et cetera, et cetera, and then work on some of the controversial areas?

I think we are talking about the same thing here in a sense, and that is this committee is going to come up with something because they feel that these widows need to be helped. I would hope that, whatever that is, whether it be number one, number two, number three, or something that was not even thrown out at you previously—you know, the three choices—I would hope that your organizations would not just see your way clear to oppose whatever it might happen to be because it is less than all. I think that would be really unfair, and it certainly would be unfair to the committee and to the chairman who really wants to help here, but he is trying to do it within the confines of our real world.

You are right about foreign aid, you are right about waste, you are right about all these things, but the darn thing is, the trouble

is, it has already happened, and our real world now is faced with—I complain all the time, and the chairman has heard me say it half a dozen times, if not more, that the spending for veterans' programs has been less than 50 percent of what it has been over the last 150 years as it has been for all other programs. I think it is just terrible. We could say, well, let's catch up; why should we continue to put the veterans' program spending in the same category? And I get sick of all that, too.

But I guess what I am saying, regardless of how I may feel, how the chairman may feel or whatever the case may be, the real world is that we are faced with today, and I would hope that you would work with the committee in trying to come up maybe with the least painful way to at least try to help some of these widows because they need help, there is no question about it, and yet we know there are a lot of the widows out there who don't need help. Now, are they deserving? Yes, they are deserving. They suffered as much, if not more than their spouses did previously. There is no question of deserving; deserve is one thing, and need is maybe another.

So I don't know. I am rambling up here, and apologize for that, but I guess what I am saying is, please, let's be reasonable, let's work together, let's not take an "all or nothing" type of position. If we do, we are probably going to get nothing, and that is ridiculous because there are too many people out there that need help.

Thanks.

Mr. SLATTERY. Mike, thank you very much. Thanks again for your help here today and your comments. I think we are all trying to pursue the same goal, and that is to make our programs serve our people better and use our money as wisely as we can, and I appreciate very much your being here today.

Thank you all, and I a look forward to hearing from you and chatting with you further. Thank you.

Mr. SLATTERY. The next panel we will welcome today is Mr. Earnest Howell, the national legislative assistant for AMVETS; and Col. Christopher Giaimo, the deputy director of Government relations for the Retired Officers Association; and Mr. Philip Wilkerson, the assistant director of the National Veterans Affairs and Rehabilitation Commission for the American Legion; Mr. Bill Crandell, the legislative advocate for Vietnam Veterans of America; and I would also like to welcome to the table Mr. Richard Frank, the president of the Board of Veterans' Appeals Professional Association, Inc.

So if you would all come up to the table at this time, we will try to wrap up our hearing here in one panel.

I welcome you all. Let's start with Mr. Howell. Lead off.

STATEMENTS OF EARNEST E. HOWELL, NATIONAL LEGISLATIVE ASSISTANT, AMVETS; PHILIP R. WILKERSON, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; COL. CHRISTOPHER J. GIAIMO, DEPUTY DIRECTOR, GOVERNMENT RELATIONS, RETIRED OFFICERS ASSOCIATION; BILL CRANDELL, LEGISLATIVE ADVOCATE, VIETNAM VETERANS OF AMERICA; AND RICHARD B. FRANK, PRESIDENT, BOARD OF VETERANS' APPEALS PROFESSIONAL ASSOCATION, INC.

STATEMENT OF EARNEST E. HOWELL

Mr. HOWELL. Good morning, Mr. Chairman.

AMVETS is grateful to you and the members of the subcommittee this for this opportunity to be here today. In the interests of time, I will summarize my remarks, and there are a number of points that I do wish to make.

H.R. 2341 and H.R. 1796 represent concepts which AMVETS strongly supports. We are pleased to see that the subcommittee continues to promote and defend progressive veterans legislation which gives veterans hope as they try to counter the effects of an unstable national economy.

AMVETS commends the subcommittee for providing the cost-of-living adjustment increase contained in H.R. 2341, but we reiterate our concern that the link between the Consumer Price Index and the VA COLA is unjust because it fails to account for the extraordinary daily living expenses customarily incurred by disabled veterans.

AMVETS wholeheartedly supports the intent and substance of H.R. 1796. This legislation was the subject of a resolution adopted by AMVETS at our 49th national convention in New Orleans, LA, in August of this year. We feel that the increase is more than justified and long overdue.

When it comes to dealing in budget situations where you have a hard time looking for dollars, as we have suggested to the Appropriations Committees in the past, given a choice between dollars for people and dollars for things, we would suggest that you favor dollars for people.

The Veterans' Appeals Improvement Act of 1993 addresses issues which AMVETS has for some time recognized as crucial to the quality and timeliness of VA claims processing, and there are a few points that I would like to make with regard to the proposed legislation.

It is important that we recognize the fact that the adjudication process, in order to function properly, should be such that decisions are reached at the lowest possible level, preferably at the regional office. Once a claim reaches BVA, if it is determined that a decision based on all the available evidence of record is not possible, there is but one course of action: The case must be remanded back to the office of original jurisdiction, the regional office, for further development.

AMVETS supports streamlining adjudication to promote more timely claims resolution, and we welcome the use of modern telecommunications technology to make BVA hearings easier to accomplish and more convenient to veterans. We also favor single-Board-

member ratings subject to the review of the chairman or vice chairman.

AMVETS encourages the subcommittee to maintain a positive approach to improving both the quality and efficiency of BVA. In so doing, we urge you to keep in mind the separate and distinct roles of the RO and BVA in the adjudication process. Reducing remands by adding claims development to BVA's mission would not be prudent. That part of the adjudication machine is not broken and does not need to be fixed, but as we have stated on several occasions during this congressional session, what does need fixing is the quality and timeliness of development in VA's 58 regional offices.

The solution is to thoroughly train and retain a core of highly motivated individuals to get it done right the first time.

The double-edged sword effect of COVA has certainly added to the backlog. However, AMVETS expects the tightening up during the early years of COVA to pay dividends in the long run.

We consider the move to permit the PVA chairman and vice chairman to administratively allow previously denied claims on the basis of a difference of opinion to be in keeping with the principal of resolving reasonable doubt in favor of the veteran. Furthermore, removing the limits of the length of time temporary BVA members may serve will allow for consistency and continuity in resolving issues in which temporary members have been involved.

AMVETS is deeply concerned, however, that an autonomous BVA chairman able to make decisions and assign cases to members or panels at will without being subject to review appears to suggest a departure from the concept of COVA as the final authority in the disposition of VA claims. AMVETS does not support this provision, as it would in some cases make possible the perception of bias concerning case assignment and review by the chairman and the BVA in general. Periodic COVA review of the BVA chairman's actions and decisions would afford a considerable measure of trust and confidence in the appeals process.

The Secretary's proposal to clarify BVA's authority "to obtain and employ medical opinions" would further complicate BVA's role by altering its very mission. If this change were carried out, BVA would undertake claims development which is the primary duty of the regional office. While this would conceivably cut down on the number of remands, it would hamper the timeliness of BVA decisions. It is difficult to accept that by adding case development to BVA's daily routine it would speed up the decision process.

Claims development should come from the regional office, either initially or in response to a remand from the BVA. But more important, if claims development were to be done at BVA, we might soon begin to see less development being done at the regional office level, and this would also send a disturbing message to the regional offices that any failure on their part to properly develop claims would be accomplished by BVA.

Mr. Chairman, you asked for comments regarding the alternative means of reinstating certain former spouses' and VA dependents' indemnity compensation benefits. With regard to the first alternative where subsequent remarriage would be of a short duration, AMVETS would suggest that the law stipulate that these former

spouses' reinstatement be delayed for a period equal to that of the length of the subsequent marriage and that only one reinstatement be allowed.

The second alternative would offset DIC benefits against earned income and reinstate death pension benefits. If this option were to be adopted, we would suggest a minimum floor below which the benefit of the former spouse would not be reduced.

The third alternative would reinstate former spouses at a significantly reduced rate. This would be the simplest to administer and implement, and it would not involve the hair-splitting inherent in the other alternatives.

In closing, I would like to comment on a copy recently received—in fact, received late yesterday—of a bill to be introduced by Congressman Evans entitled "Veterans Adjudication Procedures Act of 1993."

A quick review shows that the bill incorporates many provisions previously endorsed by AMVETS and several other veterans' service organizations to speed up and improve the quality of VA claims adjudication. We hope you will schedule a full hearing on this legislation soon.

Thank you again for inviting AMVETS to testify today, Mr. Chairman. This concludes my statement.

[The prepared statement of Mr. Howell appears at p. 170.]

Mr. SLATTERY. Thank you, Mr. Howell.

Mr. Wilkerson.

STATEMENT OF PHILIP R. WILKERSON

Mr. WILKERSON. Thank you, Mr. Chairman.

The American Legion appreciates this opportunity to comment on a number of the provisions of the legislation that is under consideration this morning.

With regard to H.R. 1796 and the special pension for Medal of Honor recipients, we believe that an increase in this benefit is definitely long overdue. The American Legion is mandated to seek an increase in this benefit to $600, which we believe would be an appropriate level and recommend that this benefit be regularly reviewed and increased by Congress.

We also strongly support the proposed COLA for compensation and current law DIC recipients. We are, however, concerned by the fact that this COLA proposal would not apply to those in receipt of DIC under the prior law.

It was our belief, and it still is our belief, that in reforming the DIC program last year, Congress fully intended that those remaining under the prior law should continue to receive the cost-of-living adjustment. Such commitment was clearly expressed in the conference agreement to Public Law 102–568, and we appreciate your expressed support to providing a COLA for this group, Mr. Chairman.

With regard to the proposed legislation affecting the operations of the Board of Veterans' Appeals, we recognize that the Board is facing a major challenge to its ability to process appeals in a timely manner given limited personnel and other resources. One way to improve the response time would be to permit single-member decisions. We support this proposal.

However, we wish to call the committee's to the need for the Board to allocate additional personnel resources to the quality assurance function regardless of whether or not this particular provision is enacted into law. There are just too few people currently reviewing the thousands of decisions rendered by the Board, and we were very pleased by Chairman Cragin's indication that additional resources would, in fact, be devoted to ensuring quality in the Board of Veterans' Appeals decisions.

The draft bill would authorize the chairman to determine any matter or motion before the Board or to assign any such matter or motion to any Board member for determination; any such decision would not be reviewable within VA or by any court.

We agree that the chairman, as a matter of course, must have authority to make certain administrative and operational decisions. However, we have some problem with the language of this particular provision as it appears that it could be interpreted as going far beyond such limited authority.

The American Legion would be opposed to such broad, unrestricted power by the chairman or any Board official. It serves to protect the Board and not the veterans affected by the Board's actions. However, there may be a need to clarify just exactly the nature of "determinations on any matter" might include other than assignment of cases to a particular Board for decision.

The American Legion is opposed to the proposal restating the fact that an appeal may be dismissed simply because it did not allege specific error of fact or law. The net effect of this proposal is to make the appellate process more adversarial rather than less adversarial. We believe Congress should be looking at ways to ensure veterans' appeals are given timely and fair consideration rather than cutting on down on the Board's caseload by restricting the way in which appeals may be filed.

The other provision we wish to comment upon is the proposal to authorize the chairman and vice chairman to make administrative allowance in some cases based on a difference of opinion. We recognize that it may be beneficial to some veterans to give BVA officials such authority. However, we believe this committee should weigh this advantage very carefully against the perception by veterans and others that such broad authority can be the subject of abuse. A separate and arbitrary procedure whereby some cases are reviewed and allowed is, in our view, unnecessary and unfair.

Our other concerns and comments are included in our written statement. Unfortunately, Mr. Chairman, there wasn't time to include written comment concerning your concepts to provide possible reinstatement for certain DIC widows. I can offer some comments at this point and would be glad to provide some follow-up for the record and for this committee, if desired.

The American Legion supports reinstatement, full reinstatement, as a goal. We have been on record seeking that reinstatement since OBRA 1990 was enacted, and we do not have any official position on possible changes such as you have suggested in the DIC program. We will certainly be glad to work with you on this issue, realizing that there are certain budgetary constraints that must be taken into consideration.

At this point, if you want at least an initial comment on any of these proposals, I think something rather than nothing is better if, in fact, legislation can be enacted to provide relief for those widows who were barred reinstatement under OBRA 1990 possibly along the lines of item number three just as an interim measure. I think a long-range goal should be full reinstatement at some point in time in the future when the budget would permit.

That concludes our statement, Mr. Chairman.

[The prepared statement of Mr. Wilkerson appears at p. 176.]

Mr. SLATTERY. Thank you, Mr. Wilkerson. Thank you for your comments.

Now I will recognize Colonel Giaimo.

STATEMENT OF COL. CHRISTOPHER J. GIAIMO

Colonel GIAIMO. Thank you, Mr. Chairman, and good afternoon.

Let me begin by commending you for your fortitude and concern for the widows and your proposals and your alternatives mentioned in your October 5 letter on how to get them some form of reinstatement of benefits.

As you know, one of the most egregious aspects of the OBRA 1990 was the failure of the DVA to provide any form of notice about termination of benefits. Most survivors did not become aware of their loss in benefits until their current marriages ended and they applied for DIC reinstatement. In fact, many DIC beneficiaries continued to remarry after November 1, 1990, not knowing that they had forever lost their right to have their benefits reinstated.

Since OBRA was enacted, the Department of Veterans Affairs data shows that between December 1990 and June of this year, over 2,020 reinstatement requests have been turned down by the DVA, which clearly indicates that many widows are still not aware of their loss reinstatement rights.

We also fear that there are approximately 4,500 to 6,000 other widows who are not even going to bother to have their requests turned down and just have thrown up their hands in disgust.

Mr. SLATTERY. How many did you say?

Colonel GIAIMO. Between 4,500 and 6,000 additional widows who have gotten remarried and are not even going to bother after losing their subsequent husbands, to file a claim, knowing that this law exists now.

Mr. Chairman, my full statement contains some telling statistics gleaned from DVA's own reports. I commend it to your reading. These statistics graphically show that the number of terminations due to remarriage are falling. Our projections indicate that this trend, a reduction of about 425 per year, will continue for the next 5 years. Widows are simply saying it is better to just live with someone rather than risk losing their benefits.

Our analysis indicates that should reinstatement continue to be denied these people, it will cost the DVA—cost, I said—approximately $127 million over the next 5 years, money that could be saved if they simply were reassured that if their current marriage failed or ended in death, they could get their benefits back.

We spent a great deal of time wondering where some of the money is coming from. That is part of it. You would have $127 mil-

lion more dollars to use on reinstatement that you wouldn't have otherwise.

This very same situation prompted a change to the Social Security laws years ago which now allow people to live together with the benefit of marriage, just so that their earned benefits could be continued to provide them with the needed economic resources to support themselves in their retirement years.

Mr. Chairman, you asked us to comment on three alternative methods of DIC reinstatement in your letter. Let me do so in the context of a letter we received just yesterday from an 80-year-old widow with breast cancer. Her veteran husband died in 1943 after a 6-year marriage. She remarried another veteran in 1946, and he died in 1971 after a 25-year marriage. In 1980, she remarried and was widowed for the third time in 1992 after 12 years of marriage. You will note, she is not presently eligible for DIC reinstatement at a time when she needs financial resources the most.

Your first alternative is to provide reinstatement of DIC benefits for an unremarried surviving spouse whose disqualifying marriage was of a short duration such as 1, 2, or 3 years. We do not favor this alternative. We believe that the 80-year-old widow we are speaking of is more deserving because of the many years of contributions to subsequent marriages she made and also to the fact that she was off the DIC roles for all of the years that those marriages existed, thus saving the Government a considerable amount of money.

Your second alternative suggests providing for the payment of a special death gratuity for unremarried surviving spouses of veterans whose deaths resulted from service-connected disabilities in a monthly amount equal to the new $750 flat rate of DIC subject to an offset for each dollar of outside income earned. TROA and the Military Coalition strongly believe that the 80-year-old veteran's widow and others like her should not be subjected to a means test.

No other Federal survivor benefit plan has a an offset based on income, outside income. These beneficiaries are not subjected to a means test, and neither should the widows covered under the DIC survivor benefit program.

The third alternative proposed is to provide for the reinstatement of DIC benefit for unremarried surviving spouses but at a one-third or one-half of the normal rate. To be perfectly honest, Mr. Chairman, we continue to believe that full DIC is the only solution that will undo the breach of faith inherent in OBRA 1990. We do, however, recognize the fiscal constraints make that result likely. Therefore, in the interests of providing some relief, we would support a DIC reinstatement at one-half of the flat rate.

Let me conclude briefly, and again we get back to your issue of money. With respect to H.R. 2341, TROA fully supports your Veterans' Compensation Amendments of 1993 with the strong urging that full COLA's be provided to all DIC beneficiaries regardless of when or under which law their benefits arose.

Mr. Chairman, you asked about money. As an aside, if inflation comes in at 2.7 percent, which we predict, as opposed to the 3 percent you forecasted in your bill, that could generate $31 million per year or $155 million over 5 years savings in money which, in turn,

could be applied to the cost of 50 percent DIC reinstatement for widows.

That concludes my statement, Mr. Chairman. We do certainly support the increase in pension for the Medal of Honor recipients, and our full statement does contain our thoughts on changes to the Department of Veterans Affairs Board process.

Thank you.

[The prepared statement of Colonel Giaimo appears at p. 184.]

Mr. SLATTERY. Thank you, Mr. Giaimo.

The next person I want to recognize is Mr. Crandell, legislative advocate for the Vietnam Veterans of America.

Mr. Crandall.

STATEMENT OF BILL CRANDELL

Mr. CRANDELL. Thank you, Mr. Chairman. Vietnam Veterans of America appreciates the opportunity to present its views today.

We support the 3 percent cost-of-living adjustment and the increased Medal of Honor pension. Our oral testimony will concentrate on the draft legislation proposed by the Secretary of Veterans Affairs.

Mr. Chairman, VVA applauds the openness of this subcommittee, particularly yourself and Mr. Bilirakis, in encouraging the veterans' service organizations to pool our experience in solving the deepening problem of veterans' adjudications and appeals.

Most of the veterans' service organizations met several times and sent you a letter this summer detailing 17 suggestions for improving the quality and timeliness of decisions at the regional offices and the Board of Veterans' Appeals.

The BVA case log backlog has two aspects. One is the staggering and growing load of unresolved cases being shuffled back and forth between BVA and the regional offices, and the second is that the quality of the work at the regional offices is inadequate. Stop denying valid claims, and the case backlog will stop growing.

DVA's focus is simply on the volume of paperwork occupying the Board's time, manifested in delays of over 3 years in resolving cases. Thus, the draft bill before this subcommittee aims at finding shortcuts through the paperwork that will allow BVA to clear its desks.

The draft before us does a significantly better job than the one we reviewed last summer. The proposal for single member panels is workable, as is the idea of electronic hearings. Nevertheless, there are some problems which we have spelled out in full in our printed testimony.

We generally support empowering the chairman to cut through the muck and resolve cases. However, in two places the draft bill goes too far in that direction, jeopardizing the rights of the veteran.

The problem is the one that Mr. Tejeda raised this morning—that the bill seems to give authority, as it is worded, to the chairman to determine any matter before the Board. The chairman sounded as if that is not what he means, and, if so, that language needs to be tightened up, because it certainly reads that way. That would result in arbitrary and capricious dismissals and determination of cases.

Another serious problem is administrative allowances. This is a license for favoritism. Administrative allowances must not be reinstated. BVA has always asked that veterans be allowed to make their cases fairly. If they can do that, they should win. If they cannot do that, they should lose.

Mr. SLATTERY. Let me interrupt you just a second. We have a vote on, and we have approximately 8 minutes to go over and make this vote. Mr. Bilirakis and I will need a couple of minutes to walk over there. We would like to wrap this up, if we could, in the next five to 6 minutes without feeling like anybody has been slighted here, if we can do that. If you can abbreviate things———

Mr. CRANDELL. I will be happy to let it go with our written testimony and turn it over to any questions you might have.

Mr. SLATTERY. Can we do that?

Mr. CRANDELL. Sure.

[The prepared statement of Mr. Crandell appears at p. 195.]

Mr. SLATTERY. If your oral testimony is contained exclusively in your written testimony, we have it, and we will hang on to that, and if we have any questions, we will get to those. Is that okay.

Mr. CRANDELL. That is fine with us.

Mr. SLATTERY. You won't feel slighted, will you, Mr. Crandell?

Mr. CRANDELL. No.

Mr. SLATTERY. Okay. I am trying to get you all out of here as fast as we can. You probably have schedules, and if we go over there and vote, it may be an hour or 30 minutes before we get back, and I don't want to keep you all waiting here.

So why don't I recognize Mr. Frank for an abbreviateed version of his written testimony.

If you can do it in 2 or 3 minutes, we would appreciate it.

STATEMENT OF RICHARD B. FRANK

Mr. FRANK. Yes, sir.

Mr. Chairman, Mr. Bilirakis, and members of the committee, on behalf of the Board of Veterans' Appeals Professional Association, I would like to thank the committee for this opportunity to appear, and particularly to both of you gentlemen for the interest you have shown in this critical area.

I will essentially stand on our prepared testimony. The only aspect I did wish to touch upon orally is this. We understand the concerns raised by some members of the veterans community concerning the funding for the proposal in Mr. Evans' bill as well as standards of competence and appointment for Board members, and we are certainly prepared to work with these groups to resolve these issues. I believe we have answers to their questions and concerns, and I can't emphasize enough that we simply wish to work with them effectively to address this issue now.

Right now, as we meet, 40 out of the 48 attorney members of the Board are leaving to become administrative law judges; 21 of them have already submitted their applications to the Social Security Administration; 10 of them have completed the entire application process. Our information from the Social Security Administration remains soft as to a precise date, but they are talking of a time frame of either this fall or very, very early next year for the forma-

tion of large new classes of administrative law judges. We are talking in the order of 100 additional judges.

If this matter is allowed to ride through the next legislative session, I believe that tremendous and basically irreparable damage will have been done to the staffing of the Board to the great detriment not only of the Board but of course to the veteran community we serve.

On that, Mr. Chairman, I will be happy to answer any questions you may have.

[The prepared statement of Mr. Frank appears at p. 207.]

Mr. SLATTERY. Mr. Frank, I want to make sure I understood the figures you just gave us. Tell us again what———

Mr. FRANK. Okay. We now have, as we meet today, 48 attorney members of the Board. I am not counting the medical members of the Board, nor am I counting the four individuals who have in fact been nominated by the Secretary and whose nominations, however, await approval by the President to make them officially a Board member.

Mr. SLATTERY. So 48 attorney members.

Mr. FRANK. So 48 attorney members. Of those, 40 have indicated that they have or are in the process of applying; 21 of those members have in fact physically turned in the very complicated, long, and involved written application to the Social Security Administration; 10 of them have not only turned that in but have completed the interview process, the test process, and basically are now awaited scores for the new list that will be prepared.

I would emphasize also, as we detail in our written testimony, the track record we have of the fact that when the Social Security Administration is hiring, Board members who apply are offered positions. I mean we are almost talking 100 percent.

Mr. SLATTERY. Okay. Let me just get to the bottom line of this. The Social Security Administration pays about $20,000 more a year for ALJ's than what you are able to pay?

Mr. FRANK. Yes, sir. Effectivey, by the time you reach to top of that scale, the difference between the pay of an ALJ and the pay of a Board member who used to be equal to an ALJ is $20,000.

Mr. SLATTERY. Okay.

Mr. FRANK. We love our work, we love serving veterans, but obviously the incentive being provided there is just stupendous, not counting of course what happens in cost-of-living and retirement benefits and things like that. It just is such an overwhelming difference, I think, that none of us can resist.

Mr. SLATTERY. Okay.

Let me recognize Mr. Bilirakis.

Mr. BILIRAKIS. Will you tell us very briefly about the terms?

Mr. FRANK. The Veterans' Judicial Review Act for the first time imposed terms of appointment upon Board members. We had transitted through 55 years without terms of appointment. We were also, as far as we can ascertain, the only Federal workers in the entire General Schedule who have terms of appointment. We detail in our written testimony a lot of the reasons and logic that we would present on this point.

I simply would emphasize that, basically the way the law is written, it is a term at whim. There are no standards whatsoever for appointment or reappointment.

Furthermore, what I would really like to emphasize is that because of the enabling legislation of the VJRA, we have three very large classes of Board members who come up for reappointment in July of 1994, and July 1997, and July of 1990.

The law contemplates that the process must include a chairman, a secretary, and a president. If at any time during this process there is a vacancy in one of those offices, if there is any misadventure in the simple mechanical process in the appointment, people are literally dismissed regardless of performance, regardless of anyone's good intentions, and are on the street with horrendous damage.

Mr. BILIRAKIS. And this has happened. We are talking about history here, right?

Mr. FRANK. No, sir, this has not yet happened. I would point out, the first go-round of this is July of this coming year. The second go-round of this is July of 1997, and, without becoming partisan on this matter, I would simply point out, we have a Presidential election in 1996. If there is a change of administration, a change in the administration, the incumbent chairman's term runs out in March of 1997. You can easily foresee the possibilities.

Mr. BILIRAKIS. Do you have a waiting list of people who have applied for any of these positions that you could reach back? I realize they would be inexperienced and probably hurt the overall picture. Do you have a waiting list of people?

Mr. FRANK. For people to become Board members, sir?

Mr. BILIRAKIS. You are talking about 40 to 48 possibly you are going to be losing, right.

Mr. FRANK. Well, basically, we have a very limited universe of people who we believe have the necessary experience and background to operate at the tempo that we have to operate at to maintain productivity, which goes directly to our timeliness.

Mr. SLATTERY. Our time has expired. I really appreciate your being here today, I appreciate your testimony, and obviously we are learning more and more about this appeals process and the need for some changes, and I appreciate all that input, and for those of you who have testified today on the DIC benefit issue, as complicated and as divisive as it can be, I really appreciate your input there also, and we will be talking to you and trying to figure out what is the most equitable way to spend the limited resources we have in a way that will help the largest number of the widows that we are concerned about.

So thank you all again for testifying today. We appreciate it.

Withouting objection, we will enter Mr. Everett's statement in the record.

[The prepared statement of Congressman Everett appears at p. 85.]

[Whereupon, at 12:23 p.m., the subcommittee was adjourned.]

APPENDIX

103D CONGRESS
1ST SESSION

H. R. 2341

To amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1993

Mr. SLATTERY introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Compensation Rates Amendments of 1993".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. DISABILITY COMPENSATION.

Section 1114 is amended—

(1) by striking out "$83" in subsection (a) and inserting in lieu thereof "$88";

(2) by striking out "$157" in subsection (b) and inserting in lieu thereof "$167";

(3) by striking out "$240" in subsection (c) and inserting in lieu thereof "$254";

(4) by striking out "$342" in subsection (d) and inserting in lieu thereof "$363";

(5) by striking out "$487" in subsection (e) and inserting in lieu thereof "$517";

(6) by striking out "$614" in subsection (f) and inserting in lieu thereof "$651";

(7) by striking out "$776" in subsection (g) and inserting in lieu thereof "$823";

(8) by striking out "$897" in subsection (h) and inserting in lieu thereof "$952";

(9) by striking out "$1,010" in subsection (i) and inserting in lieu thereof "$1,071";

(10) by striking out "$1,680" in subsection (j) and inserting in lieu thereof "$1,782";

(11) by striking out "$2,089" and "$2,927" in subsection (k) and inserting in lieu thereof "$2,152" and "$3,105", respectively;

(12) by striking out "$2,089" in subsection (l) and inserting in lieu thereof "$2,217";

(13) by striking out "$2,302" in subsection (m) and inserting in lieu thereof "$2,442";

(14) by striking out "$2,619" in subsection (n) and inserting in lieu thereof "$2,779";

(15) by striking out "$2,927" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$3,105";

(16) by striking out "$1,257" and "$1,872" in subsection (r) and inserting in lieu thereof "$1,334" and "$1,985", respectively; and

(17) by striking out "$1,879" in subsection (s) and inserting in lieu thereof "$1,993".

SEC. 3. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 1115(1) is amended—

(1) by striking out "$100" in clause (A) and inserting in lieu thereof "$106";

(2) by striking out "$169" and "$52" in clause (B) and inserting in lieu thereof "$179" and "$56", respectively;

(3) by striking out "$69" and "$52" in clause (C) and inserting in lieu thereof "$73" and "$56", respectively;

(4) by striking out "$80" in clause (D) and inserting in lieu thereof "$84";

(5) by striking out "$185" in clause (E) and inserting in lieu thereof "$197"; and

(6) by striking out "$155" in clause (F) and inserting in lieu thereof "$165".

SEC. 4. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 1162 is amended by striking out "$452" and inserting in lieu thereof "$480".

SEC. 5. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 1311 is amended—

(1) in subsection (a)(1), by striking out "$750" and inserting in lieu thereof "$773";

(2) in subsection (a)(2), by striking out "$165" and inserting in lieu thereof "$170";

(3) in subsection (c), by striking out "$185" and inserting in lieu thereof "$197"; and

(4) in subsection (d), by striking out "$90" and inserting in lieu thereof "$96".

SEC. 6. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

(a) DIC FOR ORPHAN CHILDREN.—Section 1313(a) is amended—

(1) by striking out "$310" in clause (1) and inserting in lieu thereof "$329";

(2) by striking out "$447" in clause (2) and inserting in lieu thereof "$474";

(3) by striking out "$578" in clause (3) and inserting in lieu thereof "$613"; and

(4) by striking out "$578" and "$114" in clause (4) and inserting in lieu thereof "$613" and "$121", respectively.

(b) SUPPLEMENTAL DIC FOR DISABLED ADULT CHILDREN.—Section 1314 is amended—

(1) by striking out "$185" in subsection (a) and inserting in lieu thereof "$197";

(2) by striking out "$310" in subsection (b) and inserting in lieu thereof "$329"; and

(3) by striking out "$157" in subsection (c) and inserting in lieu thereof "$167".

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall take effect on December 1, 1993.

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103D CONGRESS
1ST SESSION

H. R. 1796

To amend title 38, United States Code, to increase the rate of special pension payable to persons who have received the Congressional Medal of Honor.

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1993

Mr. SPENCE (for himself and Mr. MCNULTY) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to increase the rate of special pension payable to persons who have received the Congressional Medal of Honor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN RATE OF SPECIAL PENSION FOR PERSONS ON THE MEDAL OF HONOR ROLL.

(a) IN GENERAL.—Section 562(a) of title 38, United States Code, is amended by striking "$200" and inserting "$500".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to months beginning after the date of the enactment of this Act.

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THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 13 1993

The Honorable Thomas S. Foley
Speaker of the
House of Representatives
Washington, D.C. 20510

Dear Mr. Speaker:

Transmitted herewith is a draft bill, entitled the "Veterans' Appeals Improvement Act of 1993," to amend title 38, United States Code, to improve and clarify certain adjudication and appeal procedures relating to claims for benefits under the laws administered by the Department of Veterans Affairs (VA or Department). I request that this bill be referred to the appropriate committee for prompt consideration and enactment.

The improvements proposed in this bill are urgently needed to reverse the trends of decreasing productivity and increasing response time of the Board of Veterans' Appeals (BVA or Board). The growing demand for personal hearings, changes made by the Veterans' Judicial Review Act of 1988, and the evolving body of case law generated by the United States Court of Veterans Appeals (CVA or Court) have all contributed to the increased delays appellants are experiencing. The number of BVA decisions issued declined from 45,308 in FY 1991 to 33,483 in FY 1992, and is projected to drop further to 27,600 in FY 1993. (The number of appeals received by the BVA has also decreased, but only from 43,903 in FY 1991 to 38,229 in FY 1992, and is expected to rise to 39,000 in FY 1993.) More dramatic has been the increase in response time, the projected number of days it would take the BVA to decide all currently pending appeals, based on the average number of decisions rendered per day over the preceding year. Response time increased from 139 days in FY 1991 to 240 days in FY 1992, and is expected to soar to 441 days in FY 1993. Current BVA procedures must be revised to permit the Board to improve its productivity and timeliness. It is estimated that allowing individual Board members to sign decisions (as proposed in the bill), alone, would raise the number of decisions issued in FY 1994 from 29,185 to 36,550, an increase of 25.2 percent.

This bill would authorize several changes in the procedures used by the BVA to adjudicate appeals from denials of veterans' benefits within VA. The changes would include allowing individual BVA members, instead of sections of three members, to rule on matters before the BVA; allowing the BVA Chairman or Vice Chairman to administratively allow, on the basis of difference of opinion, previously denied claims; and allowing the BVA to use modern telecommunications technology to hold hearings with the BVA member or

members presiding in Washington, D.C., and the claimant appearing at a remote location. The draft bill would also clarify the BVA's authority to obtain and employ medical opinions from its own staff physicians, other VA physicians, and those of other Federal departments or agencies. The enclosed section-by-section analysis describes in more detail all the changes the draft bill would make. Most of these would give the Board more flexibility to meet its increasing work load and to improve the quality and timeliness of its decisions.

Probably the single most important change this proposed bill would make in current law is that in Section 3, to authorize the BVA Chairman to determine any matter before the BVA, or rule on any motion in connection therewith, or to assign any such matter or motion to any other BVA member or panel of members for determination. Current section 7102 of title 38 allows the Chairman to divide the BVA into sections of three members, to assign members to the sections, and to designate the chiefs of the sections, and requires that a BVA section make determinations in any proceeding instituted before the BVA and on any motion in connection therewith, assigned to the section by the Chairman. The proposed change would allow the BVA to use its resources more efficiently in two ways. First, it would permit individual BVA members to decide appeals and rule on motions and fee agreements. Instead of three BVA members reviewing the same case, each member could review and decide a different case. With review of BVA decisions by the CVA now available, having three BVA members review a case is not so critical to an assurance of good, fair decisions as it once was. Second, it would permit the Chairman to rule on procedural motions and other matters not requiring extensive familiarity with all the evidence in a case, thereby freeing the other members to review and decide cases on the merits.

The proposed bill would give the BVA the flexibility to use its resources more effectively in other ways. In addition to allowing individual-member decisions and a streamlined motion-ruling procedure, the proposed bill, at Section 2(a), would remove the 67-member limit on the BVA now in section 7101(a) of title 38. Removing the limit would give the Department more flexibility in meeting the BVA's increasing work load and complying with the Congressional mandate in current section 7101(a) of title 38 "to conduct hearings and consider and dispose of appeals . . . in a timely manner." In addition to increasing the number of matters pending before the BVA, judicial review has presented the challenge of an ever-evolving body of case law to be applied in the course of BVA's deliberations. Because decisional quality remains our top priority, Section 2(a) would also statutorily recognize the position of Deputy Vice Chairman, which was adminis-

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tratively created in 1980 to help control the quality of BVA decisions. No significant cost or saving is currently anticipated in connection with these changes.

Our bill would also authorize the BVA Chairman or Vice Chairman, either upon the recommendation of another BVA member or upon his or her own motion, to allow, on the basis of difference of opinion, a claim previously denied and otherwise final. The purpose of this provision is to allow the Chairman and Vice Chairman to temper harsh results in reviewing legally correct, albeit "close," prior decisions. It would re-establish an authority previously exercised by the BVA Chairman and Vice Chairman under regulation, which the VA General Counsel determined was inconsistent with current law. Although not directly affecting the timeliness or quality of BVA decisions, this provision of the bill would result in more allowed claims. Another provision of the draft bill, Section 10, would establish the traditional regulatory effective dates for awards administratively allowed, generally the date of application to reopen the claim, but for cases in which VA undertook review solely on its own initiative, the date the claim was administratively allowed (since no application to reopen the claim would have been received). Estimating 50 additional allowances under the provision for administrative allowance each year, based on 65 administrative allowances during FY 1989, the last full year the old procedure was in effect (the total number of cases the BVA decides in a year is now lower), the costs would be:

Fiscal year	Costs
1994	$250,433
1995	$259,449
1996	$269,049
1997	$278,734
1998	$288,769
TOTAL	$1,346,434

The number of requests for hearings before the BVA, especially in the field, has increased since passage of the Veterans' Judicial Review Act of 1988. In FY 1991, the BVA held 1,108 hearings in Washington, D.C., and 880 hearings in VA regional offices; in FY 1992, the BVA held 1,394 hearings in Washington and 1,258 in regional offices. Section 8 of the draft bill, besides bringing together in one section hearing provisions currently in various sections of title 38, would authorize the BVA Chairman, when suitable facilities and equipment are available, to offer an appellant the opportunity to appear at a remote facility and participate, through voice or picture-and-voice transmission by electronic or other means, in a hearing with the BVA member or members sitting in Washington, D.C. The authority

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to hold telecommunicated hearings would provide an alternative to sending a BVA member to a field facility when such a trip would not be cost-effective or time-effective. Section 8 also allows VA to specify where field hearing requests must be filed, which would help the BVA to better maintain a docket that satisfies the provision of current section 7110 that hearings be scheduled in the order the requests were received.

Section 7 of the draft bill would make explicit the authority of the BVA to obtain medical opinions from its own staff physician-advisers, from physicians of the Veterans Health Administration within VA, or from physicians of other Federal departments or agencies. This would be in addition to its current authority, in section 7109 of title 38, to obtain advisory medical opinions from independent medical experts not employed by VA.

These changes would help the BVA to meet one of the evidentiary requirements articulated by the CVA, to consider only independent medical evidence to support its findings and not to rely on the unsubstantiated opinion of its own deciding members. Colvin v. Derwinski, 1 Vet. App. 171 (1991). An increased demand for medical opinions is expected because of this CVA-imposed requirement. Using in-house BVA staff physicians as medical experts would save time, and the BVA would also be able to take advantage of nationally recognized expertise within VA and other Federal departments or agencies as needed. To satisfy due-process concerns, the proposal would require that medical opinions be in writing and that the appellant have an opportunity to respond. No additional VA staff are required, and no cost or saving is anticipated from these changes.

Section 2(c) of the proposed bill would repeal the Chairman's authority, in current section 7101(c)(1) of title 38, to designate temporary BVA members and would remove the limits, in current sections 7102(a)(2)(A)(ii) and 7102(a)(2)(B), on the length of time an acting member may serve. Section 2(d) would require the BVA Chairman to report each year who served as acting Board members during the preceding fiscal year and how many cases they participated in. No Chairman has ever used the authority to designate a temporary member. Removing limits on how long an acting member may serve is important to keeping the same member associated with a case until final disposition. The BVA has had acting members hold a hearing, request a medical opinion, or otherwise participate in the evidentiary development of a case only to have their period as acting members expire by the time a decision was ready to be made. Also, the administrative burden of staying within the 90 and 270-day limits is considerable. The proposed change would allow acting members to follow through with a case to completion and relieve the BVA of that administrative burden. On the other hand,

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Congress would be able to monitor the Chairman's use of acting Board members and to redress any abuse of that authority by the Chairman. No cost or saving is associated with these proposed changes.

Enactment of this draft bill would result in estimated additional costs, all associated with the administrative-allowance provision, of $250,433 for fiscal year 1994 and $1,346,434 for the five-year period of fiscal years 1994 through 1998. Because it would increase direct spending, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to submission of this legislative proposal to the Congress.

Sincerely yours,

Jesse Brown

Jesse Brown

Enclosure

JB/mjt

103d Congress

1st Session

A BILL

To amend title 38, United States Code, to improve and clarify certain adjudication and appeal procedures relating to claims for benefits under laws administered by the Department of Veterans Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.--This Act may be cited as the "Veterans' Appeals Improvement Act of 1993".

(b) REFERENCES.--Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an

amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. COMPOSITION OF THE BOARD OF VETERANS' APPEALS.

(a) BOARD MEMBERS AND PERSONNEL.--Section 7101(a) is amended to read as follows:

"(a)(1) There is in the Department a Board of Veterans' Appeals (hereafter in this chapter referred to as the 'Board'). The Board is under the administrative control and supervision of a Chairman directly responsible to the Secretary.

"(2) The members of the Board shall be the Chairman, a Vice Chairman, such number of Deputy Vice Chairmen as the Chairman may designate under subsection (b)(4), and such number of other members as may be found necessary to conduct hearings and consider and dispose of matters properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary to conduct hearings and consider and dispose of matters properly before the Board in a timely manner.".

(b) APPOINTMENT AND REMOVAL OF BOARD MEMBERS.--Section 7101(b) is amended--

(1) in paragraph (2)(A) by striking "other members of the Board (including the Vice Chairman)" and inserting in lieu thereof "Board members other than the Chairman";

(2) in paragraph (2)(B) by striking "paragraph" and inserting in lieu thereof "subparagraph"; and

(3) by striking out paragraph (4) and inserting in lieu thereof:

"(4) The Secretary shall designate one Board member as Vice Chairman based upon recommendations of the Chairman. The Chairman may designate one or more Board members as Deputy Vice Chairmen. The Vice Chairman and any Deputy Vice Chairman shall perform such functions as the Chairman may specify. The Vice Chairman shall serve as Vice Chairman at the pleasure of the Secretary. Any Deputy Vice Chairman shall serve as Deputy Vice Chairman at the pleasure of the Chairman.".

(c) ACTING BOARD MEMBERS.--Section 7101(c) is amended by--

(1) striking out paragraph (1) and inserting in lieu thereof:

"(1) The Chairman may from time to time designate one or more employees of the Department to serve as acting Board members.";

(2) striking out paragraph (2) in its entirety; and

(3) redesignating paragraph (3) as paragraph (2) and in that paragraph by--

(A) striking "temporary Board members designated under this subsection and the number of"; and

(B) striking "section 7102(a)(2)(A)(ii) of this title" and inserting in lieu thereof "paragraph (1)".

(d) CHAIRMAN'S ANNUAL REPORT.--Section 7101(d)(2) is amended--

(1) in subparagraph (D) by striking "year; and" and inserting in lieu thereof "year;";

(2) in subparagraph (E) by striking "year." and inserting in lieu thereof "year; and"; and

(3) by adding at the end of paragraph (2) the following new subparagraph:

"(F) the names of those employees of the Department designated under subsection (c)(1) to serve as acting Board members during that year and the number of cases each such acting Board member participated in during that year.".

(e) CONFORMING AMENDMENTS.

(1) Section 7101(d)(3)(B) is amended by striking "section 7103(d)" and inserting in lieu thereof "section 7101(b)".

(2) Section 7101(e) is amended by striking "a temporary or" and inserting in lieu thereof "an".

SEC. 3. ASSIGNMENT OF MATTERS BEFORE THE BOARD.

Section 7102 is amended to read as follows:

"$ 7102. Assignment of matters before the Board

"The Chairman may determine any matter before the Board, or

rule on any motion in connection therewith, or may assign any such matter or motion to any other Board member or a panel of members for determination. Any such assignment by the Chairman may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.".

SEC. 4. DETERMINATIONS BY THE BOARD.

(a) GENERAL.--Section 7103(a) is amended to read as follows:

"(a) When the Chairman retains a matter or submits it to another Board member or a panel of members for determination in accordance with section 7102 of this title, or to an expanded panel of Board members in accordance with subsection (b) of this section, the Chairman, other member, or panel of members may:

"(1) Issue an order dismissing any appeal, in whole or in part, which fails to allege specific error of fact or law in the determination being appealed or in which the determination being appealed has become moot. Each order of dismissal shall include a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, in support of the dismissal.

"(2) Issue an order remanding the case, in whole or in part, to the agency of original jurisdiction for such additional development as the Chairman, other member, or panel of members may consider necessary for proper disposition of the case.

"(3) Render a written decision with respect to any issues not dismissed or remanded, which decision shall constitute the Board's final disposition of the issues so decided. Such decisions shall be based on the entire record in the proceeding, upon consideration of all evidence and material of record, and upon applicable provisions of law and regulation. The Board shall be bound in its decisions, including allowances made under the provisions of subsection (d) of this section, by the regulations of the Department, the instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department. Each decision of a Board member or a panel of members shall include--

"(A) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

"(B) an order granting appropriate relief or denying relief.

Decisions by a panel of Board members, except as otherwise provided in subsection (b), shall be made by a majority of the members of the panel.".

(b) RECONSIDERATION.--Section 7103(b) is amended to read as follows:

"(b) The decision of a Board member or a panel of members is final, unless the Chairman orders reconsideration of the case, and a claim disallowed by the Board may not thereafter be reopened or allowed except as provided in section 5108 of this title and subsection (d) of this section. If the Chairman orders reconsideration in a case, the case shall be considered upon reconsideration by a panel of members other than the Chairman if one member originally decided the case or by an expanded panel of members other than the Chairman if a panel originally decided the case. When a panel considers a case after a motion for reconsideration has been granted, the decision of a majority of the panel members shall constitute the final decision of the Board, except as provided in subsection (d). If the expanded panel cannot reach a majority decision, the Chairman may either assign additional members other than the Chairman to the panel or vote with the members of the expanded panel so as to create a majority decision. Either the expanded panel majority or the majority made with the vote of the Chairman shall constitute the final decision of the Board, except as provided in subsection (d).".

(c) ADMINISTRATIVE ALLOWANCE; NOTICE OF DETERMINATION.--Section 7103 is further amended by adding at the end of that section:

"(d) Whenever a Board member other than the Chairman or Vice Chairman is of the opinion that a prior, otherwise final denial of a claim should be revised or amended to allow the claim in whole or in part, based on a difference of opinion as to how the evidence should be evaluated rather than on any error in the prior decision, the Board member shall recommend such allowance to the Chairman or Vice Chairman. The Chairman or Vice Chairman, whether upon the recommendation of any other Board member or upon the Chairman's or Vice Chairman's own motion, if of the opinion that a prior, otherwise final denial of a claim should be revised or amended to allow the claim in whole or in part, based on a difference of opinion as to how the evidence should be evaluated rather than on any error in the prior decision, shall approve the award of any benefit, or any increase therein, on the basis of such difference of opinion. The discretionary exercise of the authority provided to the Chairman and Vice Chairman under this subsection shall not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

"(e) After reaching a determination under any of the provisions of this section, the Board shall promptly mail a copy of its written decision to the appellant and the appellant's authorized representative (if any) at the last known address of the appellant and at the last known address of such

representative (if any), respectively.".

SEC. 5. JURISDICTION OF THE BOARD.

Section 7104 is amended by--

(a) striking the subsection designation "(a)";

(b) striking "211(a)" and inserting in lieu thereof "511(a)"; and

(c) striking all after "made by the Board.".

SEC. 6. APPELLATE PROCEDURE.

Section 7105(d) is amended by striking out paragraph (5).

SEC. 7. MEDICAL OPINIONS.

Section 7109 is amended to read as follows:

"§ 7109. Medical opinions

"(a) A Board member or a panel of members before whom a matter which involves a medical question is pending may, in the discretion of the member or panel, request an opinion on that medical question from--

"(1) an employee of the Board who is licensed to practice medicine in any State;

"(2) an employee of the Veterans Health Administration who is licensed to practice medicine in any State and who has been designated by the Under Secretary for Health to provide such an opinion; or

"(3) an employee of any Federal department or agency who is licensed to practice medicine in any State and who has been designated, in accordance with arrangements made by the Secretary with the head of any such Federal department or agency, to provide such an opinion.

"(b) When, in the judgment of a Board member or a panel of members assigned a matter for determination in accordance with section 7102 of this title, the medical complexity or controversy involved in that matter warrants expert medical opinion in addition to, or in lieu of, that available within the Department or within another Federal department or agency, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department or of another Federal department or agency. The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution. For purposes of this section, an employee of a medical school, university, or clinic shall not be considered an employee of the Department or another Federal department or agency just because the medical school, university, or clinic

receives grants from, or provides contract services to, the Department or another Federal department or agency.

"(c) Any opinion provided under this section shall be in writing and made a part of the record. The Board shall notify a claimant that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall mail to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any) a copy of such opinion when the Board receives it. An opportunity for response by or on behalf of the claimant shall be provided following the mailing of the copy (or copies) of such advisory medical opinion.".

SEC. 8. HEARINGS.

Section 7110 is amended to read as follows:

"§ 7110. Hearings

"(a) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

"(b) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing will participate in making the final determination in the claim.

"(c) An appellant may request a hearing before the Board at

either its principal location or a regional office of the Department. Any hearing held at a regional office of the Department shall be scheduled for hearing in the order in which the requests for hearing in that area are received by the Department at the place specified by the Department for the filing of requests for such hearings.

"(d) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission, or picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location. When such facilities and equipment are available, the Chairman may, at his or her discretion, afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or members as provided in subsection (c).".

SEC. 9. TABLE OF CONTENTS.

The table of contents at the beginning of chapter 71 is amended by--

(a) striking "7102. Assignment of members of Board." and inserting in lieu thereof "7102. Assignment of appellate matters.";

(b) striking "7109. Independent medical opinions." and inserting in lieu thereof "7109. Medical opinions."; and

(c) striking "7110. Traveling sections." and inserting in lieu thereof "7110. Hearings.".

SEC. 10. EFFECTIVE DATES OF AWARDS BASED ON DIFFERENCE OF OPINION.

Section 5110 is amended by adding at the end the following new subsection:

"(o) The effective date of the award of any benefit, or any increase therein, pursuant to section 7103(d) of this title on the basis of a difference of opinion shall be:

"(1) if the award resulted from review initiated by an application to reopen the claim for the benefit in question under the provisions of section 5108 of this title, fixed in accordance with the facts found but shall not be earlier than the date the Department of Veterans Affairs received such application; or

"(2) if the award resulted from review of the final determination undertaken by the Department of Veterans Affairs solely on its own initiative, the date the Chairman or Vice Chairman of the Board of Veterans' Appeals approved the award.".

THE HONORABLE MICHAEL BILIRAKIS
THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OCTOBER 13, 1993

THANK YOU, MR. CHAIRMAN.

I APPRECIATE YOUR SCHEDULING THIS HEARING ON SEVERAL IMPORTANT BILLS. I KNOW WE HAVE A NUMBER OF WITNESSES TESTIFYING TODAY, SO I WILL KEEP MY REMARKS BRIEF.

OUR FIRST BILL, H.R. 1796, INCREASES THE RATE OF SPECIAL PENSION PAYABLE TO INDIVIDUALS WHO HAVE RECEIVED THE CONGRESSIONAL MEDAL OF HONOR. CURRENTLY, MEDAL OF HONOR RECIPIENTS RECEIVE A MONTHLY PENSION OF $200 -- AN AMOUNT ESTABLISHED OVER 15 YEARS AGO. H.R. 1796 INCREASES THE SPECIAL PENSION TO $500 PER MONTH.

I WOULD LIKE TO TAKE A MOMENT TO COMMEND MY COLLEAGUE, FLOYD SPENCE, FOR INTRODUCING H.R. 1796. I AM PROUD TO SAY THAT I AM A COSPONSOR OF HIS LEGISLATION.

OUR SECOND BILL, H.R. 2341, PROVIDES A 3 PERCENT COST-OF-LIVING ADJUSTMENT EFFECTIVE DECEMBER 1, 1993, FOR SERVICE-CONNECTED VETERANS AND RECIPIENTS OF DEPENDENCY AND INDEMNITY COMPENSATION. THIS RATE OF INCREASE WILL BE THE SAME COST-OF-LIVING ADJUSTMENT EXPECTED TO BE PROVIDED TO SOCIAL SECURITY RECIPIENTS.

THE THIRD BILL ON OUR AGENDA IS DRAFT LEGISLATION ON THE OPERATION OF THE BOARD OF VETERANS APPEALS. THE SUBCOMMITTEE HAS MADE IMPROVING THE CLAIMS PROCESS ONE OF ITS PRIORITIES IN THE 103RD CONGRESS. WE HAVE HAD SEVERAL HEARINGS ON THIS ISSUE AND ARE WELL AWARE OF

THE PROBLEMS PLAGUING THE CURRENT SYSTEM. THEREFORE, I AM ANXIOUS TO HEAR THE TESTIMONY OF OUR WITNESSES ON THE "VETERANS' APPEALS IMPROVEMENT ACT OF 1993."

FINALLY, WE HAVE ASKED THE VETERAN SERVICE ORGANIZATIONS TO COMMENT ON PROVIDING LEGISLATIVE RELIEF FOR CERTAIN SURVIVING SPOUSES WHO WERE BARRED FROM REINSTATEMENT TO THE DIC DEATH PENSION ROLLS BY A PROVISION OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

SINCE THE PASSAGE OF OBRA 90, I HAVE HEARD FROM MANY SURVIVING SPOUSES WHO ARE FACING FINANCIAL HARDSHIPS BECAUSE OF THE TERMINATION OF DIC REINSTATEMENT ELIGIBILITY. IN FACT, JUST LAST WEEK I RECEIVED A LETTER FROM A WIDOW IN MY DISTRICT WHO IS FEELING THE DEVASTATING EFFECT OF OBRA 90. HER SECOND HUSBAND RECENTLY PASSED AWAY AND SHE IS HAVING DIFFICULTIES MAKING ENDS MEET SINCE HIS DEATH. SHE IS CURRENTLY SEEKING EMPLOYMENT IN ORDER TO MEET HER FINANCIAL OBLIGATIONS.

AS YOU MAY KNOW, MR. CHAIRMAN, OVER THE YEARS, I HAVE BEEN EXTREMELY INTERESTED IN THE DIC PROGRAM. FOR SEVERAL CONGRESSES, I HAVE INTRODUCED LEGISLATION WHICH WOULD ALLOW THE DIC WIDOW TO REMARRY AFTER AGE 55 AND RETAIN HER DIC COMPENSATION.

THE DIC PROGRAM IS THE ONLY FEDERAL ANNUITY PROGRAM THAT DOES NOT ALLOW A WIDOW WHO IS RECEIVING COMPENSATION TO REMARRY AFTER THE AGE OF 55 TO RETAIN

HER ANNUITY. MY BILL, H.R. 68, SIMPLY AMENDS TITLE 38 TO PROVIDE THAT REMARRIAGE OF THE SURVIVING SPOUSE OF A VETERAN AFTER AGE 55 SHALL NOT RESULT IN THE TERMINATION OF DIC.

MILITARY SERVICE REQUIRES A GREAT DEAL OF SACRIFICE -- NOT JUST ON THE PART OF THE SERVICEMEMBER, BUT OF HIS OR HER ENTIRE FAMILY AS WELL. I BELIEVE IT IS INCUMBENT UPON US AS MEMBERS OF CONGRESS TO ENSURE THAT SURVIVING SPOUSES RECEIVE THE BENEFITS TO WHICH THEY ARE ENTITLED.

AS ALWAYS, I LOOK FORWARD TO WORKING WITH YOU AND THE OTHER MEMBERS OF THE SUBCOMMITTEE ON ANY SUGGESTIONS THE VETERANS SERVICE ORGANIZATIONS MAY HAVE ON THE ISSUES BEFORE THE SUBCOMMITTEE TODAY.

THANK YOU MR. CHAIRMAN.

REMARKS
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
HONORABLE FLOYD D. SPENCE
OCTOBER 13, 1993

MR. CHAIRMAN, MR. BILIRAKIS, AND COLLEAGUES, THANK YOU FOR GIVING ME THIS OPPORTUNITY THIS MORNING TO TESTIFY ON BEHALF OF H.R. 1796, WHICH I INTRODUCED EARLIER THIS YEAR WITH MY COLLEAGUE MR. MIKE MCNULTY OF NEW YORK.

H.R. 1796, WOULD AMEND SECTION 562(a) OF TITLE THIRTY-EIGHT OF THE UNITED STATES CODE TO INCREASE THE SPECIAL PENSION FOR CONGRESSIONAL MEDAL OF HONOR RECIPIENTS - A PENSION, I MIGHT ADD, WHICH HAS NOT BEEN INCREASED NOR ADJUSTED FOR COST OF LIVING OR INFLATION SINCE 1978. THIS BILL WOULD INCREASE THE MONTHLY PENSION FROM THE CURRENT LEVEL OF TWO HUNDRED DOLLARS PER MONTH TO 500 HUNDRED DOLLARS PER MONTH. PRESENTLY, THERE ARE APPROXIMATELY 200 LIVING MEDAL OF HONOR PENSIONERS, AND IT IS ANTICIPATED THAT THE ANNUAL COST OF THIS INCREASE WOULD BE APPROXIMATELY 700 HUNDRED THOUSAND DOLLARS FOR THE FIRST YEAR, WHICH WOULD DECREASE EACH SUBSEQUENT YEAR THEREAFTER DUE TO THE PASSING OF THE MEMBERS OF THIS LIMITED GROUP OF VETERANS. ALTHOUGH MY BILL DOES NOT CONTAIN A FUNDING MECHANISM, A SIMILAR PIECE OF LEGISLATION INTRODUCED IN THE SENATE HAS INCLUDED A FUNDING PROVISION. IT IS MY HOPE THAT WE MAY WORK WITH THE ADMINISTRATION TO AGREE UPON AN APPROPRIATE FUNDING MECHANISM THAT WOULD ALLOW US TO PROVIDE FOR THIS MUCH-NEEDED INCREASE, THEREBY, NOT INCREASING GOVERNMENT EXPENDITURES NOR ADDING TO THE DEFICIT.

AS YOU KNOW, THE CONGRESSIONAL MEDAL OF HONOR IS THE HIGHEST MILITARY RECOGNITION THAT CAN BE BESTOWED ON THOSE MEN AND WOMEN WHO HAVE FOUGHT SO BRAVELY ON BEHALF OF OUR COUNTRY. WHEN CONGRESS FIRST AUTHORIZED THE CONGRESSIONAL MEDAL OF HONOR IN 1862, ITS INTENT WAS TO HONOR THOSE SOLDIERS WHO HAD DISTINGUISHED THEMSELVES BY GALLANTRY IN ACTION DURING THE WAR BETWEEN THE STATES. TODAY'S RECIPIENTS HAVE VALIANTLY DEMONSTRATED THEIR COURAGE AND DEVOTION IN GLOBAL CONFLICTS AND WARS BEYOND OUR SHORES. THESE CONGRESSIONAL MEDAL OF HONOR RECIPIENTS DESERVE OUR UTMOST GRATITUDE AND RESPECT FOR THEIR DEDICATION AND HEROISM BEYOND THE CALL OF DUTY.

UNFORTUNATELY, THE CURRENT LEVEL OF COMPENSATION DOES NOT ACCURATELY REFLECT THE INCREASES THAT HAVE BEEN GRANTED FOR BASIC RATES OF DISABILITY COMPENSATION FOR VETERANS WITH A FIFTY PERCENT DISABILITY, FROM TWO HUNDRED-THIRTY-TWO DOLLARS IN 1978 TO FIVE-HUNDRED-TWO DOLLARS IN 1992. NUMEROUS MEDAL OF HONOR PENSION RECIPIENTS ARE AT THIS TIME LIVING AT OR BELOW THE POVERTY LEVEL. THESE INDIVIDUALS, WHOM CONGRESS HAS DEEMED "HEROS" ARE SIMPLY TRYING TO MAKE ENDS MEET AND PAY BILLS. CLEARLY, THIS APPALLING SITUATION NEEDS TO BE RECTIFIED - AND NONE TOO SOON.

MR. CHAIRMAN, I AM PLEASED TO ADVISE THE SUBCOMMITTEE THAT THIS BILL IS ENDORSED BY THE NATIONAL AMERICAN LEGION, THE NATIONAL AMVETS, THE NATIONAL MARINE CORPS LEAGUE, THE NATIONAL MILITARY ORDER OF THE PURPLE HEART, NATIONAL VETERANS OF FOREIGN WARS, THE VIETNAM VETERANS OF AMERICA, INC., THE KOREAN WAR VETERANS ASSOCIATION, AMONG MANY OTHER ORGANIZATIONS. VETERANS GROUPS NATIONWIDE HAVE RECOGNIZED THE IMPORTANCE OF INCREASING THE PENSION OF CONGRESSIONAL MEDAL OF HONOR RECIPIENTS, AND MANY OF OUR COLLEAGUES HAVE COSPONSORED THIS BILL. WE CAN DO NO LESS FOR THOSE WHO HAVE GIVEN OF THEMSELVES SO UNSELFISHLY FOR THEIR COUNTRY, THAN TO RAISE THEIR PENSION TO FIVE-HUNDRED DOLLARS A MONTH.

MR. CHAIRMAN, ESTEEMED COLLEAGUES, THIS BILL IS THE RIGHT THING TO DO AND NOW IS THE TIME TO DO IT.

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OPENING STATEMENT

REPRESENTATIVE TERRY EVERETT

before the *House Subcommittee on Compensation, Pension, & Insurance*

MR. EVERETT:

Mr. Chairman, I wish to express my appreciation this morning for the leadership undertaken by yourself and the distinguished ranking minority member, Mr. Bilirakis, to conduct hearings on the important issues before us today. It is crucial, Mr. Chairman, that we continue to look for legislative vehicles which will help expedite the processing of veterans' claims, and thus facilitate a more prompt delivery of services to veterans and their dependents. The draft proposal before us today concerning the Board of Veterans' Appeals (BVA) would, in many ways, help streamline the review process and reduce the administrative delays in deciding pending appeals. According to Secretary Brown, a provision proposed by this bill allows individual Board members to rule on cases and is projected to increase the number of decisions issued in fiscal year 1994 by 25%. Certainly, we must take action to implement procedures which would increase the BVA's productivity and I am pleased to have this opportunity to hear from those who will testify before this Subcommittee today to share their vital perspectives with us.

Mr. Chairman, I know the lags and delays experienced by veterans in the Second District of Alabama who have claims pending before the BVA, regrettably, are not unique. However, I am pleased that we, as a Subcommittee, can take up this important issue. Again, I thank you, Mr. Chairman, and the distinguished ranking member, Mr. Bilirakis, for your continuing efforts in investigating approaches to improve the service our veterans receive.

STATEMENT OF
CHARLES L. CRAGIN
CHAIRMAN, BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
OCTOBER 13, 1993

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to urge prompt consideration of the Department of Veterans Affairs' proposed "Veterans' Appeals Improvement Act of 1993," and to express VA's general support for H.R. 2341, the "Veterans' Compensation Rates Amendments of 1993," and our views on H.R. 1796, a bill to increase the special pension payable to recipients of the Congressional Medal of Honor.

The Veterans' Compensation Rates Amendments of 1993

VA strongly supports a cost-of-living adjustment (COLA) in compensation and dependency and indemnity compensation (DIC) rates.

The "Veterans' Compensation Rates Amendments of 1993," H.R. 2341, would provide a 3-percent COLA, effective December 1, 1993, in the statutory rates of compensation for service-disabled veterans and of DIC for some (but not all) survivors of veterans who die as a result of service. The 3-percent rate increase would be the same as the COLA expected to be provided to veterans' pension and Social Security recipients under current estimates. Should the current estimates prove incorrect, VA would support a compensation/DIC COLA of a percentage equal to the actual Social Security increase.

Compensation under title 38, United States Code, is payable for disabilities resulting from injuries or diseases incurred or aggravated during active service. Payments are based upon a statutory schedule of rates which vary with the degree of disability assigned by VA, and additional amounts are payable to veterans with spouses and children if the veteran's disability is rated 30 percent or more disabling. DIC is payable at statutorily directed rates to the surviving spouses or children of veterans who die of service-related causes, or who die of other causes if they suffered service-connected total disability for prescribed periods immediately preceding their deaths.

With respect to adjusting rates of DIC for surviving spouses, H.R. 2341 as drafted would increase only the "new" rates of DIC, enacted in Public Law 102-568, which apply with respect to deaths occurring on or after January 1, 1993. For these deaths, surviving spouses are currently entitled to a base rate of $750 per month, increased by $165 if the veteran at death had suffered service-connected total disability continuously for at least eight years. For deaths occurring before January 1, 1993, surviving spouses are entitled to the greater of (1) the above rate or (2) the rates, which vary with the military grade attained by the deceased veteran, specified in the table in section 1311 of title 38, United States Code.

H.R. 2341 makes no mention of a COLA policy for survivors of veterans who died before Janurary 1, 1993. As drafted, the bill would not provide a COLA for these survivors. But because the bill is silent on this issue, the Department cannot be certain whether this was an oversight or an explicit policy. OBRA 1993 assumed that these survivors would receive a limited COLA. Current legislation that would provide a COLA that is inconsistent with the OBRA 1993 policies would be scored under the pay-as-you-go provision of the Budget Enforcement Act.

The bill also is silent on another OBRA 1993 policy. This concerns the "rounding down" of monthly benefit levels. OBRA 1993 requires that monthly compensation benefits be rounded down to the nearest dollar level. H.R. 2341, however, would not round down rates. Because this bill would effectively overturn the OBRA 1993 "round down" savings, it would be scored under the pay-as-you-go provisions of the Budget Enforcement Act as costing $24 million in FY 1994 and $145 million over five years. These costs are not offset elsewhere in the bill. The Department objects to this change in policy that was established under OBRA 1993 and urges the Committee to include language that would preserve the "round down" provision in OBRA 1993.

H.R. 1796

H.R. 1796 would raise from $200 to $500 the monthly rate of special pension payable to recipients of the Congressional Medal of Honor. VA objects to this bill because it would increase direct spending under the pay-as-you-go provisions of the Budget Enforcement Act; no offset is provided in the bill.

Enactment of H.R. 1796 would result in estimated costs of $676,800 in fiscal year 1994 and $3,081,600 over the five-year period fiscal years 1994 through 1998.

The Veterans' Appeals Improvement Act of 1993

The improvements proposed in the "Veterans' Appeals Improvement Act of 1993" are urgently needed to reverse the trends of decreasing productivity and increasing response time of the Board of Veterans' Appeals. The growing demand for personal hearings, changes made by the Veterans' Judicial Review Act of 1988, and the evolving body of case law generated by the United States Court of Veterans Appeals (CVA or Court) have all contributed to the increased delays appellants are experiencing. The number of BVA decisions

issued declined from 45,308 in FY 1991 to 33,483 in FY 1992, and is believed to have dropped further to 27,600 in FY 1993. (The number of appeals received by the BVA has also decreased, but only from 43,903 in FY 1991 to 38,229 in FY 1992, and is expected to rise to 39,000 in FY 1993.) More dramatic has been the increase in response time, the projected number of days it would take the BVA to decide all currently pending appeals, based on the average number of decisions rendered per day over the preceding year. Response time increased from 139 days in FY 1991 to 240 days in FY 1992, and is expected to soar to 441 days in FY 1993. Current BVA procedures must be revised to permit the Board to improve its productivity and timeliness. We estimate that allowing individual Board members to sign decisions (as proposed in the bill), alone, would have raised the output of decisions in fiscal year 1994 from 24,350 to 31,000, an increase of over 25 percent, if single-member-decision-making authority had been in effect for the entire fiscal year.

This bill would also authorize several other changes in the procedures used by the BVA to adjudicate appeals. These would include authorizing the BVA Chairman or Vice Chairman to administratively allow, on the basis of difference of opinion, previously denied claims, and allowing the BVA to use modern telecommunications technology to hold hearings with the BVA member or members presiding in Washington, D.C., and the claimant appearing at a remote location. Our bill would also clarify the BVA's authority to obtain and employ medical opinions from its own staff physicians, other VA physicians, and those of other Federal departments or agencies. Most of the proposed changes would give the Board more flexibility to meet its increasing work load and to improve the quality and timeliness of its decisions.

Probably the single most important change this proposed bill would make in current law is that in Section 3, to authorize the BVA Chairman to determine any matter before the BVA, or rule on any motion in connection therewith, or to

assign any such matter or motion to any other BVA member or panel of members for determination. Current section 7102 of title 38 allows the Chairman to divide the BVA into sections of three members, to assign members to the sections, and to designate the chiefs of the sections, and requires that a BVA section make determinations in any proceeding instituted before the BVA and on any motion in connection therewith, assigned to the section by the Chairman. The proposed change would allow the BVA to use its resources more efficiently in two ways. First, it would permit individual BVA members to decide appeals and rule on motions and fee agreements. Instead of three BVA members reviewing the same case, each member could review and decide a different case. Second, it would permit the Chairman to rule on procedural motions and other matters not requiring extensive familiarity with all the evidence in a case, thereby freeing the other members to review and decide cases on the merits.

The proposed bill would give the BVA the flexibility to use its resources more effectively in other ways. In addition to allowing individual-member decisions and a streamlined motion-ruling procedure, the proposed bill, at Section 2(a), would remove the 67-member limit on the BVA now in section 7101(a) of title 38. Removing the limit would give the Department more flexibility to allocate personnel resources in meeting the BVA's increasing work load and complying with the Congressional mandate in current section 7101(a) of title 38 "to conduct hearings and consider and dispose of appeals . . . in a timely manner." In addition to increasing the number of matters pending before the BVA, judicial review has presented the challenge of an ever-evolving body of case law to be applied in the course of BVA's deliberations. Because decisional quality remains our top priority, Section 2(a) would also statutorily recognize the position of Deputy Vice Chairman, which was administratively created in 1980 to help control the quality of BVA decisions. No significant cost or saving is currently anticipated in connection with these changes.

Our bill would also authorize the BVA Chairman or Vice Chairman, either upon the recommendation of another BVA member or upon his or her own motion, to allow, on the basis of difference of opinion, a claim previously denied and otherwise final. The purpose of this provision is to allow the Chairman and Vice Chairman to temper harsh results in reviewing legally correct, albeit "close," prior decisions. It would re-establish an authority previously exercised by the BVA Chairman and Vice Chairman under regulation, which the VA General Counsel determined was inconsistent with current law. Although not directly affecting the timeliness or quality of BVA decisions, this provision of the bill would result in more allowed claims. Another provision of the draft bill, Section 10, would establish the traditional regulatory effective dates for awards administratively allowed, generally the date of application to reopen the claim, but for cases in which VA undertook review solely on its own initiative, the date the claim was administratively allowed (since no application to reopen the claim would have been received). Estimating 50 additional allowances under the provision for administrative allowance each year, based on 65 administrative allowances during FY 1989, the last full year the old procedure was in effect (the total number of cases the BVA decides in a year is now lower), the costs would be:

Fiscal year	Costs
1994	$250,433
1995	$259,449
1996	$269,049
1997	$278,734
1998	$288,769
TOTAL	$1,346,434

The number of requests for hearings before the BVA, especially in the field, has steadily increased since passage of the Veterans' Judicial Review Act of 1988. For example, in FY 1990, BVA held 440 hearings at VA regional offices and

1,244 hearings in Washington, D.C. This is in glaring contrast to FY 1993, in which it is estimated that the BVA held 3,533 hearings at regional offices and 1,170 hearings in Washington, D.C. Section 8 of the draft bill, besides bringing together in one section hearing provisions currently in various sections of title 38, would authorize the BVA Chairman, when suitable facilities and equipment are available, to offer an appellant the opportunity to appear at a remote facility and participate, through voice or picture-and-voice transmission by electronic or other means, in a hearing with the BVA member or members sitting in Washington, D.C. The authority to hold telecommunicated hearings would provide an alternative to sending a BVA member to a field facility when such a trip would not be cost-effective or time-effective. Section 8 also allows VA to specify where field hearing requests must be filed, which would help the BVA to better maintain a docket that satisfies the provision of current section 7110 that hearings be scheduled in the order the requests were received.

Section 7 of the draft bill would make explicit the authority of the BVA to obtain medical opinions from its own staff physician-advisers, from physicians of the Veterans Health Administration within VA, or from physicians of other Federal departments or agencies. This would be in addition to its current authority, in section 7109 of title 38, to obtain advisory medical opinions from independent medical experts not employed by VA.

These changes would help the BVA to meet one of the evidentiary requirements articulated by the CVA, to consider only independent medical evidence to support its findings and not to rely on the unsubstantiated opinion of its own deciding members. *Colvin v. Derwinski*, 1 Vet. App. 171 (1991). An increased demand for medical opinions is expected because of this CVA-imposed requirement. Using in-house BVA staff physicians as medical experts would save time, and the BVA

would also be able to take advantage of nationally recognized expertise within VA and other Federal departments or agencies as needed. To satisfy due-process concerns, the proposal would require that medical opinions be in writing and that the appellant have an opportunity to respond. No additional VA staff are required, and no cost or saving is anticipated from these changes.

Section 2(c) of the proposed bill would repeal the Chairman's authority, in current section 7101(c)(1) of title 38, to designate temporary BVA members and would remove the limits, in current sections 7102(a)(2)(A)(ii) and 7102(a)(2)(B), on the length of time an acting member may serve. Section 2(d) would require the BVA Chairman to report each year who served as acting Board members during the preceding fiscal year and how many cases they participated in. No Chairman has ever used the authority to designate a temporary member. Removing limits on how long an acting member may serve is important to keeping the same member associated with a case until final disposition. The BVA has had acting members hold a hearing, request a medical opinion, or otherwise participate in the evidentiary development of a case only to have their period as acting members expire by the time a decision was ready to be made. Also, the administrative burden of staying within the 90 and 270-day limits is considerable. The proposed change would allow acting members to follow through with a case to completion and relieve the BVA of that administrative burden. On the other hand, Congress would be able to monitor the Chairman's use of acting Board members and to redress any abuse of that authority by the Chairman. No cost or saving is associated with these proposed changes.

Enactment of this draft bill would result in estimated additional costs, all associated with the administrative-allowance provision, of $250,433 for fiscal year 1994 and $1,346,434 for the five-year period of fiscal years 1994 through 1998.

TESTIMONY

THE JEWISH WAR VETERANS OF THE USA

AS PRESENTED BY

HERB ROSENBLEETH
NATIONAL EXECUTIVE DIRECTOR

OCTOBER 13, 1993

BEFORE THE UNITED STATES HOUSE
OF
REPRESENTATIVES

COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION
PENSION AND INSURANCE

INTRODUCTION

Chairman Slattery, Members of the Subcommittee on Compensation, Pension and Insurance of the House Committee on Veterans' Affairs, my fellow veterans and friends, I am Herb Rosenbleeth, National Executive Director of the Jewish War Veterans of the USA (JWV), America's oldest active national veteran's organization.

During the past 96 years JWV has stood for a strong national defense and for just recognition and compensation for veterans. The Jewish War Veterans prides itself in being in the forefront among our nation's civic groups in supporting the well-earned rights of veterans, in promoting American democratic principles, in defending universal Jewish causes and in vigorously opposing bigotry, anti-Semitism, and terrorism - here and abroad. Today, even more than ever before, we stand for these principles.

Mr. Chairman, JWV appreciates the opportunity to appear before this committee to present our views on HR 2341 and HR 1796, as well as on the draft legislation proposed by the Secretary of Veterans Affairs affecting the Board of Veterans Appeals. JWV commends you, Chairman Slattery, and the members of the Subcommittee on Compensation Pension and Insurance, for conducting this important legislative hearing.

COLA

JWV strongly recommends approval of the 3.0% cost of living increase effective December 1, 1993, as provided for in HR 2341.

Mr. Chairman, the COLA adjustments each year are essential to maintain the purchasing power of the initial entitlement for each veteran. In any year in which there is no inflation, as measured by the CPI, or in any year in which all entitlements, including social security are reduced or eliminated, JWV would support the same reduction for veterans COLA's. JWV is strongly opposed to indexing the cost of living adjustment. Congress should address the needs of the service connected disabled on an annual basis and make the proper adjustments. The personal touch is needed in determining the need for cost of living adjustment.

CMOH

Mr. Chairman, JWV strongly supports HR 1796, which would amend section 1562 of title 38, United States Code, to increase the rate of special pension payable to persons who have received the Congressional Medal of Honor. JWV recommends the pension be increased from the current $200 to $500 per month as provided in HR 1796.

There are now only 203 living holders of the Congressional Medal of Honor and this number will steadily decrease in future years.

Mr. Chairman, throughout the history of our nation, the Congressional Medal of Honor has been awarded only for the highest proven examples of valor in combat. In most cases the recipient of the CMOH either died in battle or received severe wounds. The current $200 per month pension was established over 15 years ago and has been held constant since that time. Approximately half of the CMOH recipients are past the age of active employment and this small pension is vitally important to them. Surely, these few individuals deserve some tiny share of the peace dividend which will be realized from the huge reduction of military personnel and bases.

Mr. Chairman, I can think of no better way to celebrate the 75th Anniversary of the end of World War I, the 50th Anniversary Commemorations of the significant events and battles of World War II, the 40th Anniversary of the end of the Korean War, the 20th Anniversary of the withdrawal of US Troops from Vietnam, than to pass this bill unanimously.

BVA

JWV strongly recommends approval of legislation which will authorize decisions by single members of the Board of Veterans Appeals. This procedure would quickly reduce the horrendous backlog of cases now faced by the Board.

JWV recommends that the chairman be permitted to overrule the single member decision when the claim has been denied.

These two procedures would alleviate a long standing serious problem.

CLOSING

Mr. Chairman and members of the Subcommittee on Compensation, Pension and Insurance, JWV asks for your continued support of veterans programs and benefits.

I thank you for the opportunity to appear before you today and present our views.

Testimony

of the

National Association of State Directors of Veterans Affairs, Inc.

to the

Subcommittee on Compensation, Pension and Insurance

of the

Committee on Veterans' Affairs

of the

Unites States House of Representatives

Cannon Office Building, Room 334

October 13, 1993

on

H.R. 1796: To increase from $200 to $500 the special Medal of Honor pension

and

H.R. 2341: To provide a cost-of-living adjustment for disability compensation and for dependency and indemnity compensation

and

Draft Legislation proposed by the Secretary of Veterans Affairs making changes in procedures at the Board of Veterans Appeals

Good morning. My name is James R. Peluso, and I am the Legislative Chairman of the National Association of State Directors of Veterans' Affairs.

I would like to thank the members of the Subcommittee for the opportunity to present testimony on behalf of the National Association of State Directors of Veterans' Affairs.

The National Association of State Directors of Veterans' Affairs was organized to foster the effective representation of persons claiming entitlements under Title 38 of the United States Code; to provide for the exchange of ideas and information; to facilitate reciprocal State services; to foster a better understanding of the veterans' problems at the State and federal level; to secure uniformity, equality, efficiency and effectiveness in providing services to veterans in all the States and territories; and to maintain an interest in all veterans legislation.

Procedures at the Board of Veterans Appeals

If I may, I would like to begin my testimony by addressing the proposal by the Secretary of Veterans' Affairs to make changes to the procedures of the Board of Veterans Appeals.

For several years, the National Association of State Directors of Veterans' Affairs has been concerned about the increasing delays faced by veterans and dependents who seek review of decisions made at the local Regional Offices. According to the Secretary of Veterans Affairs, the delays have grown from 139 days in 1991 to a predicted 441 days for 1993.

Secretary Brown has proposed changes that are intended to reverse the trend on increasing delays. The changes include allowing individual members of the Board of Veterans Appeals to hear and decide appeals rather than continuing the current system, which uses sections composed of three members. This change is consistent with the model used by most federal and State agencies. That is, a single hearing officer or administrative law judge to review agency determinations. This change should improve the Board's productivity, and, therefore, the National Association of State Directors of Veterans' Affairs supports it.

Additionally, Secretary Brown's proposal would authorize the Chairman or Vice Chairman of the Board to administratively allow a previously denied claim on the basis of difference of opinion. This change would vest authority in the Chairman and Vice Chairman to allow a claim based on equity and fairness, and, thus, the Board would have the ability to avoid unjust results that sometimes occur when a review board is not vested with equitable powers. Therefore, the National Association of State Directors of Veterans' Affairs supports this change.

Finally, Secretary Brown's proposal would authorize the Board to use modern telecommunications technology to hold hearings and would clarify the Board's authority to employ medical opinions from its own staff physicians, as well as physicians from other federal agencies. We support both of these changes.

Taken together, we believe that Secretary Brown's proposal will give the Board needed flexibility, will improve productivity, improve the timeliness of the Board's decisions, and, at the same time, maintain the quality of the decisions. Consequently, the National Association of State Directors of Veterans' Affairs supports Secretary Brown's proposal.

H.R. 2341 COLA for Compensation and D.I.C.

The National Association of State Directors of Veterans' Affairs also supports H.R. 2341, which would provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of disabled veterans. Too many disabled veterans, their dependents and survivors live in need. This modest increase will help some of those veterans and families keep pace with the cost of living, and, therefore, we urge that the subcommittee recommend this bill to the full Committee.

H.R. 1796 Medal of Honor Pension

H.R. 1796 would increase from $200 per month to $500 per month the special pension payable to veterans who have earned the Congressional Medal of Honor. At its winter meeting in February 1993, the National Association of State Directors of Veterans' Affairs passed a resolution to support and encourage legislation to raise the special pension for recipients of the Medal of Honor. On April 21, 1993, Congressman Spence and Congressman McNulty introduced H.R. 1796 to increase the special pension.

The Medal of Honor is the highest distinction which can be awarded to a member of the armed forces. The Medal of Honor is presented by the President, in the name of Congress, to an individual who, while serving in the armed forces, has distinguished himself conspicuously by gallantry and intrepidity, at the risk of his life, above and beyond the call of duty.

There are 204 recipients of the Medal of Honor living today, and more than 40 of those men are living at or near the poverty level.

In 1958, Congress provided that the Veterans Administration should pay a special pension of $100 per month to each person who had been awarded the Medal of Honor.

That amount was increased to $200 in 1978.

Today, inflation has eroded the value of the pension to the point where the pension is worth less than half its 1978 value. Consequently, increasing the pension to $500 in 1993 will simply maintain the real value of the 1978 pension.

The proposed increase will certainly help those who are living in need. In addition, many of the recipients are asked to participate at community and government functions at their own expense. Therefore, this increase will help defray the expense of the ceremonial role that befalls the recipients of the Medal of Honor.

Regrettably, it is too easy to overlook the bravery and sacrifice that is symbolized by this special group of heroes. For almost 20 years, we have failed to renew our appreciation to those heroes by including the special pension in the COLA legislation that is routinely passed by Congress. This bill provides us with an opportunity to correct the oversight.

The cost of restoring the value of the special pension is not prohibitive. We estimate that it will cost $735,000 to restore the value of the pension. In addition, nearly half of the Medal of Honor recipients are over the age of seventy-two. Consequently, we expect that the total cost will decline as the years pass.

This bill is supported by all of the major veterans' organizations.

We urge the Subcommittee to report the bill favorably to the full Committee.

This concludes my testimony. I'll be happy to answer any questions that the members may have.

Testimony

of the

New Jersey Deputy Commissioner, Veterans' Affairs

to the

Subcommittee on Compensation, Pension and Insurance

of the

Committee on Veterans' Affairs

of the

United States House of Representatives

Cannon Office Building, Room 334

October 13, 1993

on

H.R. 1796: To increase from $200 to $500 the special Medal of Honor Pension

GOOD MORNING. MY NAME IS RICHARD J. BERNARD, AND I AM THE DEPUTY COMMISSIONER FOR VETERANS' AFFAIRS FOR THE NEW JERSEY DEPARTMENT OF MILITARY AND VETERANS AFFAIRS.

I AM HERE TODAY TO TESTIFY IN SUPPORT OF THE INCREASE OF THE SPECIAL PENSION FOR THE 203 LIVING MEDAL OF HONOR RECIPIENTS.

I AM A SERVICE CONNECTED, DISABLED VETERAN FROM THE KOREAN WAR, WHO WOULD NOT BE HERE TODAY, NOR HAVE THE PRIVILEGE OF TESTIFYING BEFORE YOU, HAD IT NOT BEEN FOR THREE OF THESE MEDAL OF HONOR RECIPIENTS. I AM SURE THAT THIS IS THE SAME CASE WITH OTHER VETERANS OF ALL WARS.

THROUGHOUT THE HISTORY OF OUR COUNTRY BEGINNING IN 1847, OUR NATION HAS RECOGNIZED THE CONTRIBUTIONS OF EXTRAORDINARY BRAVE INDIVIDUALS.

THE RECIPIENTS OF THE MEDAL OF HONOR ARE OFTEN CALLED UPON TO ADDRESS THE VARIOUS VETERANS GROUPS, SCHOOLS AND OTHER COMMUNITY ORGANIZATIONS. WHAT BETTER GROUP OF MEN CAN BE AN EXAMPLE TO OUR YOUTH OF AMERICAN DEVOTION AND PATRIOTISM THAN THESE INDIVIDUALS.

OUR COUNTRY IS NOW IN THE MIDST OF COMMEMORATING EVENTS MARKING THE 75TH ANNIVERSARY OF THE END OF WORLD WAR I, THE 50TH ANNIVERSARY OF SIGNIFICANT EVENTS OF WORLD WAR II, THE 40TH ANNIVERSARY OF THE END OF THE KOREAN WAR, AND THE 20TH ANNIVERSARY OF THE BEGINNING OF THE WITHDRAWAL OF U.S. TROOPS FROM VIETNAM. AT THIS JUNCTION IN OUR HISTORY, IT IS IMPORTANT TO ASSIST OUR MEDAL OF HONOR RECIPIENTS IN CONTINUING THEIR MISSION OF PATRIOTISM BY PROVIDING THIS PENSION ADJUSTMENT WHICH WILL PROVIDE APPROXIMATELY THE SAME PURCHASING POWER THAT IT DID IN 1978.

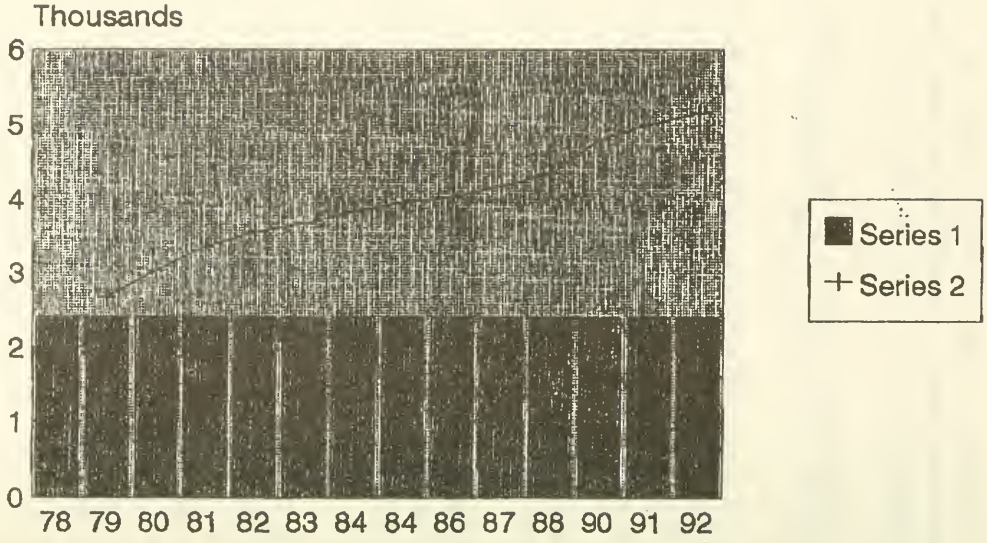
IT IS MY BELIEF THAT THIS BILL SHOULD BE SPONSORED BY EVERY MEMBER OF CONGRESS SO THAT A CLEAR MESSAGE CAN BE SENT TO OUR MEDAL OF HONOR RECIPIENTS THAT THEIR SACRIFICE, COURAGE AND PATRIOTISM HAVE NOT BEEN FORGOTTEN BY A GRATEFUL NATION.

I URGE THE SUBCOMMITTEE TO REPORT FAVORABLY ON THIS BILL TO THE FULL COMMITTEE.

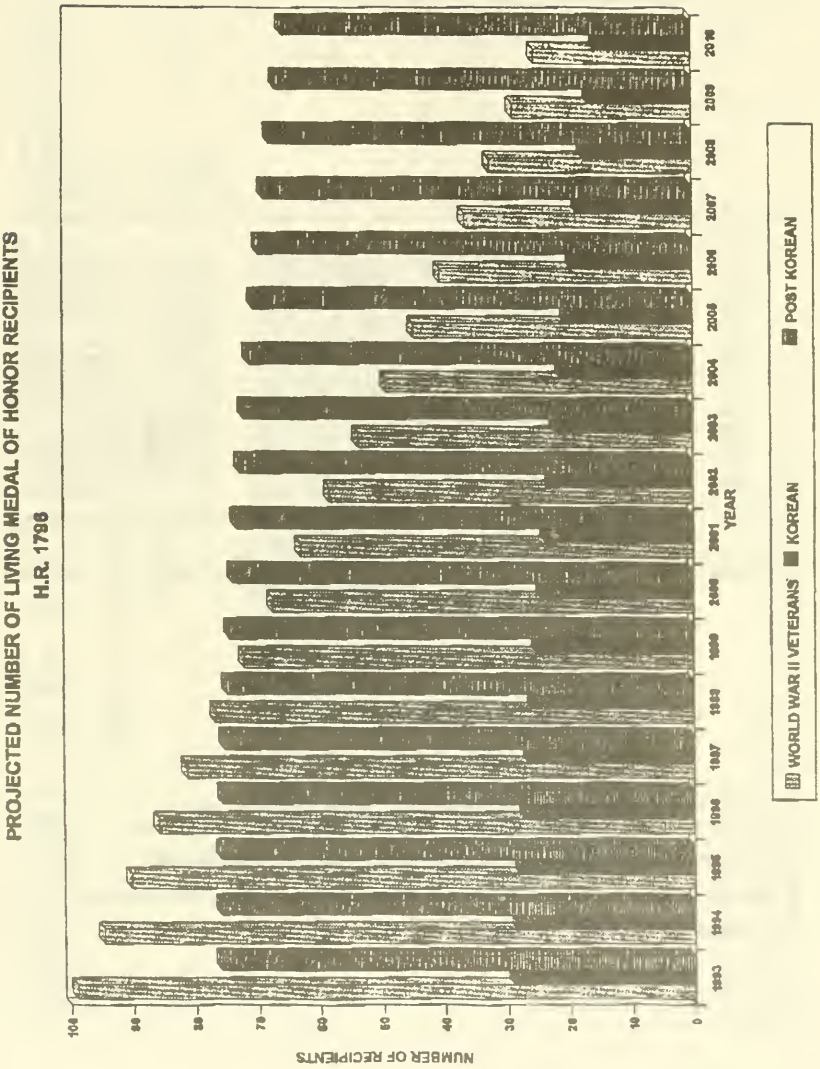
THIS CONCLUDES MY TESTIMONY. I WILL BE HAPPY TO ANSWER ANY QUESTION THAT THE MEMBERS MAY HAVE.

MEDAL OF HONOR PENSION

Annual Pension 1978-1992



Series 1 actual ; Series 2 with CPI adjustment


PROJECTED NUMBER OF LIVING MEDAL OF HONOR RECIPIENTS
H.R. 1796
NUMBER OF RECIPIENTS
YEAR
WORLD WAR II VETERANS
KOREAN
POST KOREAN

FY__ Annual CPI/
FY78 Annual CPI = Factor x Dollars = $ in FY__

1993	144.4 (Projection for 1993)				
1978	65.2	2.21	X	$200.00	$442.94

$442.94 in 1993 was $200 in 1978

Year	AVE CPI	Living Recipients	Individual Cost/Year	Total Cost/Year	* Individual Comparison To FY78	** Annual Total To keep up With CPI
1978	65.2	274	$2,400.00	$657,600.00		
1979	72.6	267	$2,400.00	$640,800.00	$2,672.39	$713,528.83
1980	82.4	264	$2,400.00	$633,600.00	$3,033.13	$800,745.01
1981	90.9	261	$2,400.00	$626,400.00	$3,346.01	$873,309.20
1982	96.5	254	$2,400.00	$609,600.00	$3,552.15	$902,245.40
1983	99.6	251	$2,400.00	$602,400.00	$3,666.26	$920,230.67
1984	103.9	244	$2,400.00	$585,600.00	$3,824.54	$933,187.73
1985	107.6	241	$2,400.00	$578,400.00	$3,960.74	$954,537.42
1986	109.6	236	$2,400.00	$566,400.00	$4,034.36	$952,107.98
1987	113.6	227	$2,400.00	$544,800.00	$4,181.60	$949,222.09
1988	118.3	222	$2,400.00	$532,800.00	$4,354.60	$966,721.47
1989	124.0	220	$2,400.00	$528,000.00	$4,564.42	$1,004,171.78
1990	130.7	210	$2,400.00	$504,000.00	$5,013.50	$1,052,834.36
1991	136.2	206	$2,400.00	$494,400.00	$5,013.60	$1,032,780.97
1992	140.3	204	$2,400.00	$489,600.00	$5,164.42	$1,053,541.10
Projection 1993	144.4	200	$2,400.00	$480,000.00	$5,315.34	$1,063,087.48
Projection1993 w/increase	144.4	200	$8,000.00	$1,200,000.00 *** $568,139.53 ****	$10,514.56	$2,102,912.62

* The individual comparison to 1978 indicates the amount needed each year to have the equivalence to the $2400 of 1978 based on CPI adjustments

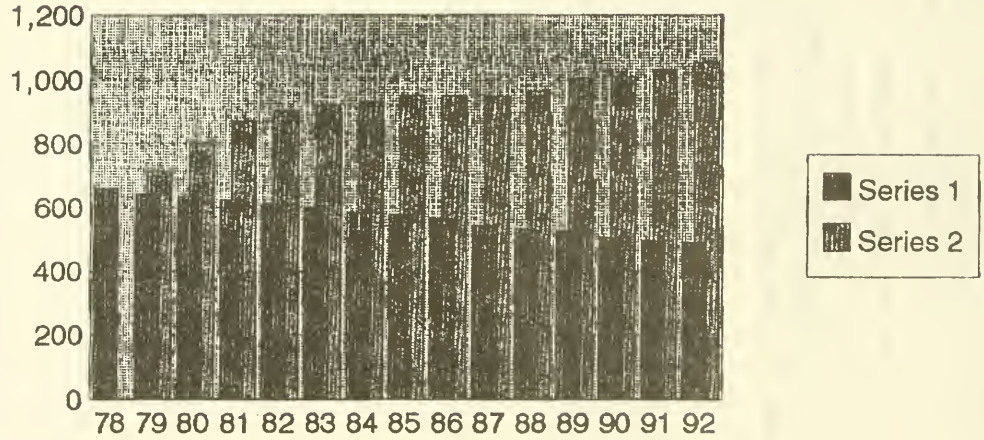
** Amount required for recipients to keep up with annual CPI adjustments

*** Indicates the 1993 dollars to provide $500/month to surviving MOH recipients

**** 1978 dollars needed to fund increase

MEDAL OF HONOR PENSION

Real Cost vs Adjusted Cost
1978-1992



Series 1 Real Cost
Series 2 Adjusted for CPI
Costs based on actual No. of living recipients/year

TESTIMONY

by

THE AMERICAN EX-PRISONERS OF WAR

BEFORE THE

HOUSE VETERANS AFFAIRS COMMITTEE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

BY

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VETERANS AFFAIRS AND LEGISLATIVE CONSULTANT

ON

OCTOBER 13, 1993

GOOD MORNING MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, AND OTHER GUESTS, IT IS A PLEASURE FOR THE AMERICAN EX-PRISONERS OF WAR TO BE INVITED TO TESTIFY BEFORE YOU TODAY ON THESE VERY IMPORTANT ISSUES.

WITH RESPECT TO H.R. 2341

A Bill to provide a cost-of-living adjustment to service-connected veterans receiving disability compensation and to widows of service-connected veterans receiving dependency and indemnity compensation, written testimony was provided to the committee with respect to H.R. 2341 on July 14, 1993 and we stand by that testimony.

Compensation to disabled veterans and their survivors reflects our National determination to honor its obligation by addressing the adverse economic impact on their lives. For our Nation to continue to fulfill that solemn obligation, it has been necessary to periodically adjust those awards in response to increases in the cost-of-living. Though occasionally belatedly, that promise has always been kept.

We do not feel it would be fair to ask those who already sacrificed so much for their country to do so again, in this case their economic security and characteristically modest standard of living.

The American Ex-Prisoners of War fully endorse and support this legislation that would provide a small cost-of-living increase.

We are all in debt to that very small number of Americans who, by their exceptional bravery and patriotism, earned the Congressional Medal of Honor.

It is a debt we can never repay. However, through the special pension provided these individuals, we seek to recognize in some small way what they have done.

An increase in the amount from $200 to $500 is fully warranted and entirely appropriate.

The American Ex-Prisoners of war wholly endorse, applaud and support this bill, and urge its prompt enactment. We applaud the determination of the Department of Veterans Affairs to improve and streamline the operations of the Board of Veterans Appeals.

However, before commenting on the specific proposals, we would be remiss if we did not first state as strongly as we can that this is only half the problem. The other half?

It is what can only be characterized as institutionalized attitudes adverse to the legitimate interests of veterans which permeate both BVA and Regional Office personnel. Those attitudes have led to an adversarial role in practice

that violates the advocacy role mandated by Congress. They apparently stem from basic insensitivity and lack of genuine understanding of the trauma expressed by our combat veterans, including POWS; from a cynical view that veterans are trying to exploit benefits; and from a misguided determination to prevent such "abuse". As a consequence, veterans face an unsympathetic, if not hostile, reception from the moment they initiate a claim at the Regional Office until they receive a final decision by the BVA.

This unfriendly atmosphere and the resultant deficiencies are well known to every veteran organization. They have been increasingly validated by the U.S. Court of Veterans Appeals. That body has documented through many critical decisions that BVA and RO personnel typically narrow the intent of Congress and fail to assist the veteran in the development of his claims and appeals so that a fair and equitable decision can be achieved.

We urge the Department of Veterans Affairs to face and correct this problem and this subcommittee to continue to give it the highest priority. None of us want to see veterans obtain a benefit not warranted by the facts, but all of us should want to see every veteran receive the benefits the entire record of their service clearly substantiates. Today the image of the Department of Veterans Affairs in the mind of the great majority of veterans is negative when it should be perceived as a friendly source of help and assistance whenever needed.

Now to our comments on this proposed legislation.

We fully support the proposals that would give the Chairman of the Board the authority and flexibility essential to an efficient--and effective operation. Current limitations in those powers have impaired rather than assure fulfillment of that mission. The accountability of the chairman to the Secretary of Veterans Affairs provides the necessary safeguards. The present regulations, intended to preserve the integrity of the decision-making responsibilities of Board Sections, have instead made deficiencies in those functions almost untouchable.

We also support the proposal to allow appeal decisions by individual Board members. While this should greatly improve efficiency, we believe there is a more important consequence. The full responsibility given that individual should result in a more thorough and evaluative review of all the evidence in the entire record. The current method of sharing accountability with other Board Members has unintentionally resulted in no member obtaining the thorough knowledge of the case necessary to a fair and equitable decision.

We note that safeguards are provided, particularly in one-member decisions, by requiring a panel where the veteran requests and/or the Chairman orders reconsideration. Also restoring the Chairman's authority to adminstratively allow a previously denied claim can help assure that a fair resolution of the appeal has been achieved.

While we recognize that the Board of Veterans Affairs must adhere to well-established legal procedures, we are concerned that legal technicalities do occasionally prevent a fair resolution of the appeal. We recommend that a section be added to the proposed law which states that, when the Chairman of the Board or Secretary of Veterans Affairs is convinced that such an outcome has occurred, they have the authority to override that decision in the interest of justice to the veteran involved. To assure that improper interference with Board panels or one-member decisions does not occur, such intervention could be subject to periodic review by the Subcommittee on Compensation, Pension and Insurance.

We are concerned with the wording of the sections allowing physicians employed by the Board to provide a medical opinion to a Board panel. We strongly recommend that the wording be amended to require the physician has recognized expertise in the issue in question.

In summary, Mr. Chairman, we support this proposed legislation, with the several reservations noted. We believe it will enable the Board to determine appeals more efficiently without sacrificing the objective of providing a fair and equitable resolution of appeal. However, as stated in our opening remarks, we remain deeply concerned that longstanding attitudes and practices permeate the entire adjudication and appeal process to the detriment of the veteran and the intended image of DVA as a caring, responsive agency for serving this nation's veterans.

THANK YOU

Gold Star Wives of America, Inc.

Statement of

Margaret Murphy Peterson, Legislative Committee Member
Gold Star Wives of America, Inc.

Before the

Subcommittee on Compensation, Pension, and Insurance
Committee on Veterans' Affairs
United States House of Representatives

Concerning Legislation to Provide a
Cost-of-Living Adjustment to the
Dependency and Indemnity Compensation Program

and

Containing Comments on Three Subcommittee
Proposals to Correct Inequities
Caused by the Bar to Reinstatement
of DIC benefits as Provided in the
Omnibus Budget Reconciliation Act of 1990 (OBRA).

October 13, 1993

Mr. Chairman and Members of the Subcommittee:

On behalf of the members of Gold Star Wives of America, Inc., I wish to thank you for the invitation to present some of our views concerning the cost-of-living adjustment (COLA) to the Dependency and Indemnity Compensation (DIC) program, as contained in H.R. 2341.

Before commenting on H.R. 2341, we Gold Star Wives would like Congress to know how we view the DIC program. It is a small, symbolic tribute paid by a "grateful nation" to acknowledge a debt that this country could never pay in full to recompense the tragic loss suffered by the widow of a soldier who died for his country. We never viewed DIC as a support payment because monetary support was only a small part of what we lost when we lost our husbands. Unlike civilian widows we do not have the added recourse of the Courts to fix a fair amount of compensation in appropriate cases, due to the Feres Doctrine. Rather, Congress is the sole arbiter determining the small tribute.

H.R. 2341 proposes a 3% COLA (or $22 per month) for only those widows receiving the minimum level of DIC. Widows who were married

for eight or more years to disabled veterans would also receive a 3% COLA (or $5 per month) on their $165 supplement. The bill, however, includes no COLA increase for 80,000 widows whose benefits were grandfathered into, and continued under, the "old plan". These 80,000 widows were widowed before January 1, 1993, and were the wives of senior NCOs and officers. The majority of these 80,000 widows were married to career soldiers. Their job was to ensure that their husbands would be battle-ready and free of all family responsibilities on a moment's notice. Most of these wives spent many years as a defacto single parent during the many and long periods of separation; they relocated so often they could not pursue their own careers or educational opportunities; and they endured years of living in military communities where they could not escape the ever-present reminders that death and horrible injury were normal occupational hazards of their husbands' military careers.

Since the drafting of H.R. 2341, it has come to our attention that the House and Senate conferees agreed to amend H.R. 2341 to provide for a COLA of 1 1/2 % (or $11 per month) for those 80,000 widows who continue to receive benefits under the old plan. The Senate Committee had supported an across-the-board 3 % COLA for all DIC recipients, but the House Committee opposed any COLA whatsoever for the widows under the old plan. The 1 1/2 % COLA emerged as the conference compromise between the two Houses.

Based upon conversations our Gold Star Wives members have had with various members of this Subcommittee and with some of the House Veterans' Affairs Committee legislative staff, our organization suspects that this COLA legislation, which attempts to freeze COLAs for widows grandfathered under the old plan, will be repeated yearly until every widow's benefit is brought down to the minimum base level.

The attempt to reduce the benefit level of senior NCO and officers' widows, who continue to receive benefits under the old plan, to the minimum level under the DIC Reform Act, is misguided. The vast majority of these widows were limited to $10,000 or

$15,000 life insurance policies on their husbands' lives. The DIC Reform Act today is supplemented by the opportunity to cheaply purchase $200,000 of life insurance. These 80,000 women will now suffer the worst of the "old plan" - that of inadequate insurance coverage, with the worst of the Reform Act - a DIC benefit resembling "alimony" at a near-welfare level.

The apparent object of this COLA legislation is to implement the DIC Reform Act's two-tier payment system, which is based upon the dead soldier's disability status. The widow of the veteran who was disabled for eight or more years will receive $170 more per month than the widow of the soldier who was killed on active duty. It is interesting to note that the widow of the disabled soldier will receive the increased benefit regardless of whether she was married to the soldier at the time of his military service.

We opposed the DIC Reform Act because it created two classes of military widows on baseless criteria. Just as we consider the distinction between the two classes of widows to be irrelevant and meaningless, we consider this COLA bill to be likewise ill-advised. The proposed amendment to the bill will lengthen the time it takes to reduce all widows to the minimum level of DIC, and for that small favor we are certainly grateful. Our organization considers the amendment to be grossly inadequate, but better than nothing. We stand firm on our position that <u>all</u> widows receiving DIC should receive the same full 3 % COLA.

In addition to commenting on H.R. 2341, we have been asked to comment on each of three proposed alternatives to full reinstatement of DIC upon termination of a remarriage, as contained in Congressman Jim Slattery's letter of October 5, 1993. Until November 1, 1990, all DIC recipients had the right to remarry and be entitled to full reinstatement of their DIC benefits upon termination of that remarriage. Congress repealed that right in §8004 of OBRA, November 5, 1990. The repeal of the remarriage reinstatment law affected not only those who were widowed after October 31, 1990, but it applied to all DIC recipients who were widowed before that date. Widows who had earlier remarried in

reliance of the benefit will not be reinstated their DIC upon termination of their remarriages, as promised.

As a preliminary note, this Sub-Committee should be aware that we military widows have been singled out to be the only group of federal government widows who permanently lose benefits upon a remarriage. It is no surprise that, unlike military widows, Congressional and civil service widows did not lose their remarriage reinstatement rights in OBRA of 1990. Those who make and implement the laws, serve themselves, and their families, first. Gold Star Wives believe there is no rational reason why military widows should be the only group of federal widows to lose their reinstatement benefits. It is a sad fact that our lobbying constituency lies in national cemeteries. We believe that we were singled out to bear the brunt of the budget cuts because we are a small and relatively disadvantaged group.

It is our belief however, that the remarriage reinstatement law, which became effective in 1970, and was in effect for 20 years, actually saved the government money. It allowed widows "to take a chance on romance," and remove themselves from the DIC roles during remarriage. The Department of Veteran Affairs continues to actively refuse to inform current DIC recipients of the change in the remarriage law in an apparent effort to encourage widows to continue to rely on the repealed law, to their detriment. Our organization voiced our concern over this deception on June 24, 1992 at a hearing before this Subcommittee, and we have brought it up again and again since that time to individual Subcommittee Members, and legislative and VA staff persons. As long as widows are deliberately not informed that the rules have changed, we can not calculate the adverse budgetary effect caused by the repeal of the law that allowed us to remarry and get off the DIC roles. The most fiscally responsible approach in addressing the remarriage reinstatement issue is to re-enact the reinstatement law. This is the proposal we recommend.

Our responses to the three proposals as contained in Congressman Slattery's letter are as follows:

1. It is proposed that DIC be reinstated to a widow following the termination of a disqualifying remarriage of only short duration, such as one or two years. This is an unworkable plan. A law of this type will force remarried widows to run to their lawyers to commence divorce actions upon the slightest hint of marital discord. It often takes one or two years to legally terminate the marriage under the best of circumstances, once the decision to divorce has been made. Poor women often wait years on a waiting list before a Legal Aid Society can process their divorce action. Many states have waiting periods of 6 months or 1 year between the time a Separation Agreement is signed and when the divorce action can be commenced. Contested actions can wait on the trial calendar for years in some states. The short time limitation, no matter when set, will be arbitrary. The widow who goes into the remarriage with the intent to do all she can to make it work will certainly be penalized for her efforts because she will not be divorced until it is too late. A law that has such an effect on a remarriage is against public policy.

2. It is proposed that an amount of $750 per month be restored to a widow following termination of a disqualifying remarriage, but that the amount be subject to a dollar-for- dollar income offset. It is also proposed that a veteran's surviving spouse receiving a non-service-connected pension be likewise reinstated. This proposal continues the trend, begun with the DIC Reform Act, to make DIC a welfare program. This benefit, at the most, would be worth only $250 per month for the widow who is 60 years old or otherwise qualifies for Supplemental Security Income (welfare for the aged). SSI now pays approximately $500 per month.

It is our belief that no widow of a service member should ever have to resort to a poverty program for her basic support. This is not what her husband was promised before he gave his life.

As a result of the repeal of the remarriage reinstatement law, however, there are many widows now who are virtually penniless. They would be helped by this welfare program.

3. It is proposed that benefits be reinstated at a rate of

1/3 or 1/2 of the normal benefit rate, upon termination of a remarriage. This proposal will not help the very poor. It will offset, not supplement, other welfare income (state welfare or SSI). Thus, if the partial DIC reinstatement is her only source of income, the remarried widow will continue to be poor whether or not this proposal is implemented. $250 - $375 per month is not enough to live on. Depending upon her age, she more than likely would receive a welfare supplement.

This proposal will ensure that a military widow with outside sources of income will not be categorically poor, but the paltry amount of the benefit will not make much of a difference in her standard of living. The amount appears particularly insulting when compared with amounts our government pays, on a per citizen basis, to other countries in the way of foreign aid. For example, this year we gave Israel $6.3 billion, which amounts to $525 per month per citizen!

If this Subcommittee determines that military widows should be the only group of federal widows to be denied full reinstatement of benefits after remarriage and that military widows should, instead, be required to rely on poverty programs, then a combination of proposals "2" and "3" should be implemented. The widow should be able to choose the particular form of benefit from the two proposals that best fits her circumstances.

Again, we believe that a guarantee of full reinstatement of benefits following the termination of a remarriage encourages a widow to leave the DIC roles, and is the most fiscally responsible alternative. To date we have been sabotaged in demonstrating the soundness of our argument because of the steadfast and irresponsible refusal of the Administration to inform widows of the repeal of the benefits reinstatement law. Widows who would otherwise not remarry will continue to remarry in reliance on their promised benefits under the old law. The deterrent effect on remarriages by the repeal of the reinstatement law cannot be measured if widows are not advised of the consequences of remarrying.

Thank you for the opportunity to present our views.

EXHIBIT 1

How Remarriage Affects Federal Survivor Programs

The chart below shows the current federal survivor programs and how the programs are affected by remarriage and by termination of a second or subsequent marriage. The VA's Dependency and Indemnity Compensation (DIC) is the only program that does not reinstate benefits when a subsequent marriage ends.

Federal Program	Effects of Remarriage	Effects of Termination of Remarriage Through Death or Divorce
DIC Benefit 38 USC §103(d)(2&3) repealed, OBRA §8004, Nov. 5, 1990	Terminates benefits permanently unless marriage is voided or annulled.	Not reinstated
Civil Service Survivor Benefit 5 USC §8331, 5 USC §8341	Remarriage under 55 terminates benefits. Remarriage at 55 or over has no effect on benefits	Benefits reinstated Not applicable
Federal Employees Compensation Act 5 USC 8442	Remarriage under 55 terminates benefits Remarriage at 55 or over has no effect on benefits	Benefits reinstated Not applicable
Railroad Retirement 45 USC 231	Remarriage under 60 (50 if disabled) terminates benefits. Remarriage at 60 or over (50 if disabled) has no effect on benefits	Benefits reinstated at reduced rate Not applicable
Social Security 42 USC §402	Remarriage under 60 (50 if disabled) terminates benefits. Remarriage at 60 or over (50 if disabled) has no effect on benefits.	Benefits reinstated Not applicable
Military Survivors Benefit Plan 10 USC 1450(b)	Remarriage under 55 terminates benefits Remarriage of 55 or over has no effect on benefits.	Benefits reinstated Not Applicable

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STATEMENT OF

BOB MANHAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

LEGISLATIVE HEARING ON COLA, MEDAL OF HONOR PENSION, AND THE BOARD OF VETERANS APPEALS

WASHINGTON, DC OCTOBER 13, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

It is my pleasure to represent the Veterans of Foreign Wars of the United States (VFW) before this important subcommittee this morning. Our 2.2 million members are very interested in and concerned about all three bills. H.R. 1796 proposes to increase the rate of special pensions to persons who have received the Congressional Medal of Honor; the second is H.R. 2341, the "Veterans' Compensation Rates Amendments of 1993"; and last is the draft bill submitted by Department of Veterans Affairs entitled "Veterans Appeals Improvement Act of 1993." The general thrust of this effort is to improve the response time of the Board of Veterans' Appeals (BVA).

H.R. 1796 proposes to increase from $200 a month to $500 a month the special pension any recipient of the Medal of Honor shall receive. The VFW certainly supports this bill. A copy of our Resolution No. 672 entitled "Increase Medal of Honor Pension" is attached. The VFW very much appreciates the bipartisan support of Mr. Floyd Spence, (R.SC) and Mr. Michael McNulty (D.NY) who cosponsored this bill in late April and the timeliness of this subcommittee chairman, Mr. Jim Slattery, (D.KS) in holding a hearing as soon as possible.

H. R. 2341 is supported by the VFW. The bill provides a 3 percent cost-of-living adjustment effective December 1, 1993, in the statutory rates of compensation for service-disabled veterans and of dependency and indemnity compensation (DIC) for survivors of veterans who die as a result of service.

We note this rate increase will be the same cost-of-living adjustment expected to be provided to veterans' pension and Social Security recipients. This meets a long standing VFW national legislative goal.

Before leaving this topic, the VFW regrets that congress must continue to deny DIC compensation to those widows and widowers of veterans who subsequently remarried after November 1991. While we recognize this action was taken as part of the Omnibus Reconciliation Act of 1990, we take this opportunity to again express our opposition to and displeasure in selecting this rather frail, older group of Americans to target for meeting a small portion of DVA's mandated budget savings. A copy of VFW Resolution No. 676 "Restoration of Dependency and Indemnity Compensation" is attached for your information.

"VETERANS' APPEALS IMPROVEMENT ACT OF 1993" is the short title of the VA's proposed bill to improve and clarify certain appellate procedures relating to BVA.

The VFW appreciates the efforts of the Department of Veterans Affairs (DVA) and recognizes its intent to primarily improve the Board's response time. We judged each of the operational sections of this bill against the single standard of how it would affect the claimant and concluded that in several instances the proposed actions worked against the veteran.

Hence, we have offered some suggested changes. We ask this subcommittee and VA itself to consider the VFW's criticisms in the spirit intended which is to make a better bill from the claimant's point of view. We favor a bill that is more consistent with the expectations and values of today's veteran community and consistent with Court of Veterans Appeals (CVA) decisions. Our specific comments follow in the order the sections appear in the draft.

SEC. 2. COMPOSITION OF THE BOARD OF VETERANS APPEALS. The VFW specifically questions subsection (c)(1) to allow the Chairman from time to time to designate one or more (emphasis added) of the Department employees to serve as acting Board members.

When we consider this action in context of the remainder of the bill it is difficult to understand why the current law should be changed that limits one individual who may be a temporary member of the Board at any one time. On the other hand, the VFW suggests that this open-ended provision could allow the Chairman to be criticized for playing politics regarding whom he selects for temporary VA duty and what specific cases the individual might be assigned for review and to provide a decision thereon.

SEC. 3. ASSIGNMENT OF MATTERS BEFORE THE BOARD. While we recognize the intent here is to allow the Chairman to run his own shop we must be very careful to ensure the Chairman does comply with existing laws and Court of Veterans Appeals (CVA) rulings. Therefore, the VFW recommends the last sentence of this section be deleted which presently states: "Any such assignment by the Chairman may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise."

SEC. 4. DETERMINATION BY THE BOARD. There is no mention of the fact that BVA is also bound by CVA decisions. Therefore, the VFW recommends something to this effect be added to SEC. A. (a)(3) clearly stating the Board shall be bound in its decisions . . . by the regulations of the Department, the CVA body of decisions, etc., etc.

Our overall impression of this section is to eliminate the present appeal process to CVA. If this impression is correct then it is contrary to CVA's ruling which in essence says veterans are not expected or required to know all the laws and regulations of the entitlement programs nor should they be expected to know specifically each entitlement that may be implied based upon all the documentation in his claim folder. Therefore, the VFW does not support any changes to title 38, USC, that will limit the assistance or element of reasonable doubt presently enjoyed by the veteran community. Or said another way, we certainly do not want to endorse any changes in law that will allow BVA to take on an adversarial role to bureaucratically deny a case without offering all possible assistance as is presently the law.

SEC. 7. MEDICAL OPINIONS. The VFW disagrees with the entire thrust of this section simply because it does not meet the CVA mandated requirement to use only independent medical opinions/examinations to determine the claimant's medical issue(s). Therefore, this veterans' organization clearly does not accept the use of any medical opinions or examinations offered by a VA licensed medical doctor. We owe it to our veterans to give them the very best medical opinion/examination money can buy from licensed, board certified, practicing medical specialists who are not directly or indirectly on the VA's payroll. This approach is both proper and equitable and is the ethical medical thing to do especially when we recall that it was VA doctors who medically did not support the veteran's claim in the first place and then again during the subsequent BVA review of the medical evidence.

SEC. 10. EFFECTIVE DATES OF AWARDS BASED ON DIFFERENCE OF OPINION. The VFW does not agree with that portion of the draft that limits the award of a benefit to a veteran to the date the Chairman or Vice Chairman of the Board approved the award based on the Boards' own initiative to review the previously denied issue(s). Again, in the interest of propriety and equity the VFW believes the award date should be retroactive to the date the veteran initially filed the claim if the condition was compensable at that time. In summary, our position on this topic is that no veteran should be monetarily penalized by what may have been an historical clear and unmistakable BVA erroneous decision in the first place.

We trust the five VFW areas of discussion offered above will be considered in the spirit intended, that of developing a better and stronger piece of legislation for all veterans. In conclusion, we point out that this veterans' organization strongly supports that portion of the draft legislation that deals with the one-member decision option. Attached for your information is a copy of VFW Resolution No. 602 "Approve One-Member Decisions At The Board Of Veterans Appeals", dated August 1993.

I will answer any questions you and the committee members may have. Thank you.

TESTIMONY

OF THE

BLINDED VETERANS' ASSOCIATION

PRESENTED BEFORE

THE HOUSE VETERANS' AFFAIRS

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

BY

THOMAS H. MILLER

OCTOBER 13, 1993

Mr. Chairman, and members of the Subcommittee, on behalf of the Blinded Veterans' Association (BVA), I want to express our appreciation for the invitation to present our views on the legislation pending before your committee this morning. We commend the subcommittee for holding this hearing on such important legislation as H.R. 2341 Veterans Compensation Rates Ammendments of 1993, H.R. 1796 pension for CMH recipients and the draft legislation Veterans Appeals Improvement Act of 1993. While H.R. 1796 affects only a few veterans, H.R. 2341 and the draft bill have tremendous impact on the lives of many disabled veterans, their surviving spouses and dependent children and therefore demand very careful attention. Since our inception in 1945, BVA has been an organization of blinded veterans providing assistance to other blinded veterans clearly we would be remiss if we failed to comment on legislation that so directly effects our constituency.

I. H.R. 2341

The BVA strongly supports passage of H.R 2341. We have testified in past years regarding the need for and importance of COLA's for our severely disabled veterans and the impact inflation has on their lives. Many of these veterans are totally dependent on VA compensation as their only income. Failure to keep pace with inflation can create serious hardships for these veterans and their families. Blinded veterans for example have additional expenses associated with blindness that people take for granted, such as reading, paying bills, minor home repairs and having someone drive them from place to place.

Mr. Chairman, BVA wants to register our strong disapproval over action taken by the Veterans Affairs Conference Committee during reconciliation resulting in DIC beneficiaries under the old law only receiving one half the authorized COLA for FY 1994. We believe this action is extremely unfair and establishes a dangerous precedent for the provision of COLA's for not only the old law but potentially new law recipients as well. Further, we believe this action is unquestionably contrary to the spirit and intent of the DIC reform legislation adopted last year and violates the agreement of the conference committee at that time. BVA understands the severe financial constraints caused by the budget deficit and the requirement to fund savings for deficit reduction but we do not believe singling out this population of beneficiaries is acceptable.

II. H.R. 1796

BVA strongly supports adoption of this vital legislation especially to the lives of those Congressional Medal of Honor Recipients alive today. In convention assembled in August of 1993, BVA adopted resolution 26-93 (see attached) supporting increasing the pension paid to these most deserving Americans from $200 to $500 and are very pleased to see such legislation was indeed introduced.

III. Veterans Appeals Improvement Act of 1993

The Veterans Appeals Improvement Act of 1993 as proposed by Secretary Brown to clarify and improve adjudication and appeals procedures related to claims for benefits administered by DVA. We are in full accord with the Secretary that action must be taken to reverse the trends of decreasing productivity and increasing response time of BVA (the Board). We are painfully aware of the tremendous backlog of claims pending at the Board and recognize the need to make the system more efficient as it attempts to process these claims. This need for improved productivity and timeliness must not be at the expense of veterans rights however and it is from this perspective we respectfully disagree with several provisions of this draft legislation. Fundamental to the problems currently being experienced by the Board is the failure of the adjudication process at the local VARO's. The number of appeals to the Board could be dramatically reduced if VA provided sufficient assistance to veterans in developing their claims and making appropriate adjudication decisions based on law and regulation at the local level. Additionally, if when these decisions are rendered, the claimants received notice of their decision, whether favorable or denial, the statement of the case should list all the documents reviewed related to the decision; indicate conclusions drawn from each document and provide the claimant with copies of each document used as evidence. This change would likely result in

a significant reduction in appeals to the Board because the claimant would be able to identify immediately how and why his claim was denied.

Before specifically responding to individual provisions of this bill Mr. Chairman, I do want to indicate that BVA is aware of the impact Judicial Review has had on the Board. Unquestionably the evolution of case law resulting from CVA decisions has contributed significantly to the Boards reduction in productivity and increase in response time. We do not believe however, that the solution to reversing these undesirable trends is to limit veterans recourse to the U.S. Court of Veterans Appeals. We are concerned that however well intentioned this bill is with regards to improving the adjudication and appeals process, it does indeed attempt to accomplish these goals at the expense of veterans rights. I will limit my comments to those sections to the bill we have most concern over.

Section 3:

Mr. Chairman, BVA reluctantly supports one member panel for review of appeals primarily for the opportunity this presents to expedite processing of appeals. We are concerned however having only one member could potentially work against the claimant. We do reccommend however that should the decision of the one member panel be appealed, a three member panel be assigned to review that appeal. BVA does object strongly to the provision of this section which prohibits judicial review on any assignment of cases by the Chairman. We oppose any attempt to eliminate a veterans rights to judicial review on any question which impacts his or her claim.

Section 4:

This section referring to Determination by the Board raises two concerns for BVA. One, the authority which allow dismissal of any appeal which does not specifically allege error in fact or law is ok as it stands provided the claimant receives clear communication in the denial of the claim regarding the basis on which the claim was denied. Two, the new section "d" directing referral to the Chairman or Vice Chairman on any case where the denial was based on difference of opinion should be changed by deleting the clauses that prohibit awards from any further appeal. Again veterans rights to judicial review are being stripped and we find this unacceptable. BVA also has some concerns regarding the limitations being placed on payment of retroactive benefits. Our concern stems from the potential for the Board to claim the denial was based on difference of opinion regarding interpretation of evaluation of evidence when in fact there was a clear and unmistakable error. We have no problem with limiting the retroactivity to the date a claimant requested reopening of the claim or to the date the Chairman renders an award if the review was initiated by the Board but deliberately classifying the review or award as difference of opinion rather than error must be prevented. It is for these reasons judicial review on this question must be preserved.

Section 7:

This section regarding medical opinions again raises two questions for BVA. First the claimant should have access to outside, independent expert medical opinion during the appeals process. We believe it is imperative, to the greatest extent possible, that the claimant should be assured of an independent objective opinion rather than such opinion that could at the very least appear biased in favor of DVA. While utilizing VA physicians or physicians from other federal departments or agencies might expedite the process this does not insure objectivity or lack of bias to the same extent as utilizing outside medical opinions. Certainly this is not to say that physicians employed by the government are without integrity but any suggestion or appearance must be avoided. Under this section we would also recommend that Section 7109 (c) include language that require documents reviewed cite references for conclusions and be made a part of the record. Again this would provide essential information to the claimant regarding reasons and basis for denials and possibly obviate the need for appeal or at least give meaningful focus for an appeal.

Section 10:

BVA expressed our views on the issue of effective dates of awards above in comments on Section 4. We do believe limitations on awards is appropriate where difference of opinion is unquestioned provided this is not used as a means of limiting effective dates of awards that had previously been denied as the result of unmistakable error in fact or law.

IV. REINSTATEMENT OF DIC BENEFITS

Mr. Chairman, BVA appreciates the opportunity to comment on possible legislation that would eliminate the permanent bar to reinstatement of surviving spouses to the DIC roles in the event of the termination of the subsequent marriage to the one that provided entitlement to DIC benefits initially. Ideally, we believe the provision of OBRA 1990 that imposed the permanent bar should not have been enacted and the full entitlement should be restored. We realize however, because of the budget deficit and provision of OBRA 1990, pay as you go, offsets must be found. Finding offsets or savings is always extremely difficult as witnessed in the most recent reconciliation bill and our comments above regarding providing only half a COLA to old law DIC recipients. If as we suspect it is unrealistic to reinstate all eligible surviving spouses to the DIC roles, restoring reinstatement rights to as many as possible seems appropriate.

Our comments that follow on the three proposed methods of reinstatement are provided in the context of our constituency and the potential impact each might have.

1. Mr Chairman, regarding the first proposal or concept which would reinstate those surviving spouse who experienced a "short duration marriage" seems extremely arbitrary and would likely result in the fewest surviving spouses receiving reinstatement rights. By far the majority of our constituency that would be affected are older, World War II era and the reason for a short duration second marriage would more likely be the result of death rather than divorce. On the other hand younger surviving spouses seeking reinstatement would have had a second marriage terminated by divorce rather than death. Either way, the probability of a second marriage ending after such a short duration as 1 or 2 years seems very slim. Consequently very few surviving spouse would qualify. Obviously, how short duration is defined is critical. From a cost standpoint this approach would seemingly be the least costly requiring smaller offsets.

2. Proposal number two which would provide reinstatement to the basic rate of $750 with a dollar for dollar offset for outside income also has significant drawbacks for our constituency. As stated above most of our DIC eligible beneficiaries would be of an age to be entitled to SSA benefits and the offset would make reinstatement benefits very minimal.

3.The final proposal which would provide a percentage of DIC benefits to a reinstated beneficiary appears to have the most merit with respect to our particular constituency. We recommend however the percentage be no less than 50%. This would not unduly penalize surviving spouses that had income outside such as Social Security. Additionally, reinstatement should be to the total benefit entitled to under the new law ($750 + $165)

Mr. Chairman these are very quick responses to your request for input as you indicated made on very short notice. We do commend you for making an effort to find legislative relief for those most deserving individuals and to find an equitable solution. We hope these comments have been useful and we look forward to working with you as legislation is developed.

V. Conclusion

Again Mr. Chairman, thank you for the opportunity to appear this morning to present our views on the pending legislation before this committee and I am available to respond to any questions you or the other members of the subcommittee might have.

RESOLUTION 26-93

WHEREAS, the Medal of Honor is the highest distinction which can be awarded to a member of the Armed Services of the United States, AND

WHEREAS, the Medal of Honor is presented by the President, in the name of Congress, to an individual who while serving in the Armed Forces "distinguished himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty," AND

WHEREAS, there are approximately 204 Medal of Honor recipients living to day, and in excess of 40 recipients who are at or near the poverty line, AND

WHEREAS, a law established in 1958 provided that the Department of Veterans Affairs shall pay monthly to each person whose name has been entered on the Army, Navy, Air Force and the Coast Guard Medal of Honor roll a special pension at the rate of $100, AND

WHEREAS, this amount was increased from $100 to $200 in 1978, AND

WHEREAS, the Consumer Price Index percentage increased from 1978 through 1992 has forced the $200 monthly pension to a "real" value of nearly $500, AND

WHEREAS, many of the individuals are asked to participate at community and government functions at their own expense and often times a recipient is unable to participate due to a lack of funds, AND

WHEREAS, it is only fitting that the recipients of the Medal of Honor should be acknowledged with an increase in the present monthly pension for their conspicuous gallantry and intrepidity at the risk of life, above and beyond the call of duty, in action involving actual conflict with an opposing armed force, **THEREFORE BE IT**

RESOLVED, that the Blinded Veterans Association, in convention assembled in Tucson, Arizona on this 14th day of August, 1993, hereby supports and encourages federal legislation which would amend the U.S. Code, Chapter 38, subsection 562, to increase the monthly pension of Medal of Honor recipients from $200 to $500.

STATEMENT OF
JOSEPH A. VIOLANTE
LEGISLATIVE COUNSEL
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 13, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the over 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, may I say that we deeply appreciate being given this opportunity to present our views on legislation that would authorize an upward adjustment in Department of Veterans' Affairs (VA) service-connected disability and death compensation benefits to our nation's veterans and their survivors. Additionally, we are pleased to present our views on a bill that would authorize an increase in the special pension payable to recipients of the Medal of Honor, draft legislation intended to improve the timeliness of VA appellate procedures and decisions, and the development of a proposal that would restore Dependency and Indemnity Compensation (DIC) eligibility that was eliminated for certain survivors of service-connected disabled veterans by the Omnibus Budget Reconciliation Act of of 1990 (OBRA).

Mr. Chairman, at the outset, I wish to commend you, Ranking Member Mr. Bilirakis, and all members of the Subcommittee for your decision to give hearing consideration to the legislation contained on today's agenda. We deeply value and appreciate the advocacy that this Subcommittee has always demonstrated on behalf of our nation's wartime disabled.

H.R. 2341

Mr. Chairman, H.R. 2341 was introduced in the House of Representatives on June 9, 1993, by yourself and proposes, through appropriate amendment of Title 38, USC, a three percent across-the-board upward adjustment in VA service-connected disability and death compensation benefit rates. Also upwardly adjusted by the same percentage figure would be the dependency allowances and, with one exception, the special statutory awards that apply to these two programs, as well as the VA's annual clothing allowance that is provided to certain categories of service-connected disabled veterans whose prosthetic or orthopedic appliances cause unusual clothing wear.

Under the terms of the bill, these adjustments would become effective December 1, 1993, and would appear for the first time in benefit checks received on or about January 1, 1994.

Mr. Chairman, in the nine months (December 1992 - August 1993) that have transpired and for which data are available since these rates were last adjusted, the Department of Labor, Bureau of Labor Statistics has reported a 1.9 percent rise in the cost-of-living. Projecting an approximation of similar consumer price index (CPI) movement through November 30, 1993, we can see the need for a benefit adjustment in the range of two and one-half percent to three percent.

Based on such an assumption, and to put it into more meaningful terms, a three percent benefit increase would range from a modest $36 per year (three dollars monthly) for a veteran with a ten percent service-connected disability, to $624 per year ($52 monthly) for a veteran who is determined to be 100 percent permanently and totally disabled due to service-

connected causes.

Mr. Chairman, I want to make note of the fact that in its provisions, H.R. 2341 does not propose to increase the "K" award as set forth in Section 1114(k), Title 38, USC. This is a special monthly benefit - presently $70 - paid in addition to the basic rates of compensation to certain veterans who have incurred a service-connected loss, or loss of use of, a single extremity or certain other body organs or functions.

This particular award, though last increased to its present amount in 1992, has only been infrequently included in prior compensation bills over the years. We therefore ask the Subcommittee to include the "K" award in any compensation bill that it may recommend to the full Committee.

Mr. Chairman, with the concern noted above, the DAV does support favorable consideration of the disability compensation/DIC adjustments proposed by H.R. 2341.

Having stated this, we also state - as we have done in the past - our willingness to pose no objection should the Congress decide, for the economic well-being of our nation, that the cost-of-living adjustments in all federal programs should be foregone or subject to delay in Fiscal Year 1994. As members of this Subcommittee are aware, disabled veterans have been willing and continue to be willing to do their fair share for America. However, as the Congress is not likely to arrive at such a consensus, we do urge the Subcommittee to favorable report the bill to the full Committee.

H.R. 1796

Mr. Chairman, H.R. 1796 was introduced in the House in April of this year by Representatives Floyd Spence and Michael McNulty. It proposes, through appropriate amendment of Section 1562(a), Title 38, USC, to increase the special pension authorized to recipients of the Medal of Honor from its present figure of $200 per month to $500 per month.

Mr. Chairman, the Disabled American Veterans, by virtue of a resolution approved during our organization's 1993 Annual National Convention, stands in strong support of this legislation.

There are presently 204 living recipients of the Medal of Honor - our nation's highest military combat award for intrepid gallantry, at the risk of one's life, above and beyond the call of duty. The Medal of Honor's special pension was last increased to its current $200 monthly amount in 1978. Prior to that time, the special pension had been set at $100 per month (authorized in 1961).

Mr. Chairman, if the above cited most recent Congressionally authorized increases in the Medal of Honor special pension - two during the last thirty-two years - are to be used as "yard sticks" for future action, then it can certainly be argued that it is time for another adjustment. Unquestionably, the ravages of inflation have taken their toll on the purchasing power of this award. It now requires almost $450 to purchase the same amount of goods and services that $200 would purchase in 1978.

In addition to financial considerations, I am certain that all will agree that recognizing the service and sacrifice of this truly unique, select group of genuine American heroes is long overdue.

As we approach the celebration of Veterans' Day on November 11, what more fitting and meaningful tribute could there be than for Congress to approve this modest and meritorious legislation?

The DAV strongly recommends the Subcommittees immediate and favorable action on H.R. 1796.

DRAFT BILL
"Veterans' Appeals Improvement Act of 1993"

Mr. Chairman, let me again commend you, Ranking Minority Member Representative Bilirakis and the members of this Subcommittee for your concentrated effort to revise and improve the appeals procedures relating to claims for benefits from the Department of Veterans Affairs (VA). The DAV acknowledges and applauds these efforts.

Mr. Chairman, VA's draft bill would amend Title 38, United States Code, to improve the appeals process relating to VA claims. DAV supports the concept of improving this process. We have previously provided testimony before this Subcommittee pertaining to our recommendations on how the VA appeals process could be improved. Additionally, and in conjunction with other Veterans Service Organizations, we came to a consensus on a number of recommendations designed to improve the claims process which was submitted to this Subcommittee.

It is extremely important, Mr. Chairman, to keep in mind that pursuant to the provisions of 38 C.F.R. Section 3.103(a) (1992), "proceedings before VA are ex parte in nature and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interest of the Government." (Emphasis added.) Further, under the provisions of 38 C.F.R. Section 3.303(a) (1992), "determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans' Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case." (Emphasis added.)

Mr. Chairman, it is also crucial to remember that in many cases the appeals process is slowed down due to the entrenched and erroneous beliefs, i.e. the mind-set, of some VA appellate personnel, such as the BVA's unwillingness to accept evidence favorable to the veteran, even when that evidence is from disinterested physicians including VA physicians. Therefore, when we attempt to improve the system, we must be careful not to punish the innocent victims, the claimants. We must focus our attention and channel our efforts on correcting what is wrong with the system, as opposed to further eroding veterans' rights and benefits.

Historically, VA regulations, to include those specific to the appeals process, have been designed to ensure veterans receive all benefits to which they are entitled. The system allows for correction of errors when found and provides resolution of doubt favorable to the claimant. The system is designed to allow a veteran, sometimes with the help of a representative, to pursue a claim for benefits, without resorting to costly legal services. Section 4 of this bill makes the process more legalistic, thereby allowing some valid claims to fall thrcugh the cracks and makes the process more costly because of possible need for greater reliance on legal professionals. The end product is an appeal system which manages to prevent eligible veterans from receiving benefits to which they are entitled.

In an effort to provide our comments and concerns in a manner that will be most beneficial to this Subcommittee, we will discuss this bill section by section.

Section 2.
Composition of the Board of Veterans' Appeals.

DAV does not object to any of the proposed changes contained in this section.

Section 3.
Assignment of Matters before the Board.

DAV is extremely concerned with the language used in this proposed change, specifically that, "the Chairman may determine any matter before the Board." (Emphasis added.) The phrase is extremely broad and could have serious ramifications such as allowing the Chairman to decide claims on appeal to BVA. Therefore, as written, DAV is opposed to this provision.

DAV strongly supports the concept of single Board member decisions. It is our sincere desire that the concept of single Board member decisions could be quickly enacted into law.

Section 4.
Determinations by the Board.

Paragraph (a) indicates that:

> "When the Chairman retains a matter or submits it to another Board member or panel for determination in accordance with section 7102 of this title ... the Chairman's other member or, panel of members may issue an order **dismissing** any appeal, in whole or in part, **which fails to allege specific error of fact or law in the determination being appealed ...**" (Emphasis added.).

DAV strongly opposes dismissing an appeal which fails to allege specific error of fact or law. No veteran or claimant should be denied a benefit which he or she is entitled to just because of the failure to allege the specific error of fact or law. This would make the VA's ex parte, nonadversarial proceedings too legalistic and would place the veteran in an unfair situation with too great of a burden to bear. Certainly, the VA has an "obligation" to assist claimants pursuant to the provisions of Section 3.103(a) and the staff attorneys and Board members at the BVA are capable of identifying an error of fact or law present in the challenged action. As contained in 38 USC Section 7104(a) and as noted in subparagraph (a)(3) of this proposed section, the BVA's decision must be based on the entire record, consideration of all evidence and material of record and "upon applicable provisions of law and regulation."

DAV also opposes the provision of this section which allows the Chairman to determine any matter for the same reasons as specified in Section 3 above.

DAV recommends the following changes to paragraph (a)(2):

1.) Strike "Chairman, other member," and insert in lieu thereof "Board member"; and

2.) Insert the phrase "..., except on a matter remanded with specific instructions to the BVA from the Court." at the end of the sentence.

Pursuant to subparagraph (a)(3), the BVA will continue to be bound in its decisions by regulations of the Department and precedent opinions of the General Counsel. DAV recommends that

BVA should only be bound by General Counsel opinions when such opinions are not inconsistent with the decisions of the U.S. Court of Veterans Appeals.

DAV recommends that the following be inserted in the first sentence, fourth line of paragraph (b) following the word "except":

"in the case of clear and unmistakable error or".

This will clarify the authority to correct clear and unmistakable error whether by the agency of original jurisdiction or in a decision of the BVA.

DAV does not oppose the provisions of paragraph (c) of the draft bill which would amend Section 7103 by adding a provision to restore the authority of the Chairman and Vice Chairman to grant administrative allowances of an otherwise final, unfavorable determination on the basis of a difference of opinion. DAV, however, opposes that portion of the amendment to Section 7103 which would prohibit judicial review of an administrative allowance.

The distinction between an administrative allowance, based on a difference of opinion, and a decision overturned on a finding of error, may be significant because, in the former instance, the effective date of the award cannot be earlier than the application to reopen or review the claim. However, a reversal of a prior decision on the grounds of error has the same effect as if the corrected decision had been made on the date of the reversed decision. Because thousands of dollars can be involved as a result of a finding of "difference of opinion" versus "error," a claimant should be entitled to appeal an administrative allowance if he or she believes that there is reversible error in the prior determination. Accordingly, a claimant should not be prohibited from appealing to the Court for the greater benefit.

Section 5
Jurisdiction of the Board.

DAV is not opposed to this proposed change.

Section 6.
Appellate Procedure.

DAV supports this change.

Section 7.
Medical Opinions.

DAV strongly opposes the use of BVA employees licensed in the practice of medicine to render medical opinions on appeals pending before the BVA.

Under current statutory provisions, "the Board may secure an advisory medical opinion from one or more *independent* medical experts *who are not employees of the Department.*" 38 USC Section 7109(a) (Emphasis added). At the Regional Office level, the same authority and requirement of independence exists. 38 USC Section 5109. Because the BVA's proceedings are nonadversarial, it is clear that the BVA is not entitled to a partisan expert, and if Congress had deemed BVA physicians disinterested experts, it would have been a contradiction for it to have enacted a statute requiring the utilization of medical experts "who are not employees of the Department." Moreover, the statutory language, "who are not employees of the Department" is clear and unquestionably precludes advisory opinions from physicians employed by VA.

Mr. Chairman, if the language of the statute itself were not alone so clear as to permit only the conclusion that advisory opinions must be given by experts outside the VA, the legislative history removes any room for doubt:

> The committee believes that, by conferring this authority on the (Secretary), those veterans whose claims involve complex or controversial medical issues will have the added benefit of the advice of outside medical experts to insure that the issue in question receives a thorough and totally objective review by an individual who is an acknowledged expert in the particular field and who is not an employee of the (VA).

H.R. Rep. No. 963, 100th Cong., 2d Sess. 37(1988), reprinted in 1988 U.S.C.C.A.N. 5782, 5820. (Emphasis added.)

The Senate envisioned use of "independent medical expert's" (IME) opinions and, under very limited circumstances, opinions of BVA physicians not serving on the panel deciding the case:

> The Committee believes that, although the utilization of a particular Member physician's expertise may be appropriate on occasion, especially in cases involving very specialized medical areas, such consultation on an *ex parte* basis without informing the claimant of existence and content of such an opinion and allowing a response to that opinion deprives the claimant of a basic due process right. Accordingly, section 107 of the Committee bill provides that if a BVA Member or employee consults with a physician not on the panel considering the case, the claimant would have to be given notice of that consultation along with a copy of any opinion rendered by such a physician and then be allowed 60 days in which to respond to the opinion. The information gained through this process would be required to be included in the discussion of evidence in the final decision. This same requirement would apply to use of IMEs.

S. Rep. No. 418, 100th Cong., 2d Sess. 43-44 (1988). The House version was adopted with an amendment derived from the Senate version which provided for "IME opinions at both the Board and Regional Office levels" and "that the claimant be notified of a request for an IME opinion and provided a copy as soon as it is received." 134 Cong.Rec. 16,650 (daily ed. Oct. 18, 1988) (Explanatory Statement on the Compromise Agreement), *reprinted in* 1988 U.S.C.C.A.N. 5834, 5842.

Mr. Chairman, it made sense in 1988 not to allow BVA physicians to render medical opinions in appeals pending before the BVA, and it continues to make sense today.

The BVA's action in obtaining evidence to rebut the veteran's evidence necessitates that the veteran then demonstrate that his evidence is more probative, and this requires an inquiry into the relative qualifications of the experts and other factors pertaining to who is in the best position to offer a medical opinion on the question. This clearly turns the proceeding into an adversarial one contrary to 38 C.F.R. Section 3.103(a), which is all the more proof that the BVA acts unlawfully when it departs from its role as an impartial appellate tribunal and goes about the business of creating evidence to rebut the veteran's as if the BVA were an advocate for the government. "In fact, the (BVA) is required to remand a claim to the VARO for further development where it finds the record inadequate." *Chisem v. Brown*, 4 Vet.App. 169, 175(1993). It is only in those situations that "expert

medical opinion, in addition to that available within the Department, is warranted by the medical complexity on controversy involved in an appeal case" that the BVA is authorized to obtain an independent advisory opinion. Otherwise, physicians "within the Department" who treat or examine veterans but who are somewhat removed from the adjudication process, and presumably neutral, can be called upon to answer those types of questions that routinely arise in these matters.

Mr. Chairman, we cannot allow the appellate process at VA to become adversarial in nature. The BVA should not be allowed to "hunt" for medical evidence that would tip the scales of justice in the Government's favor and against the veteran. The DAV currently has appeals pending before the United States Court of Veterans Appeals where BVA physicians have rendered opinions based, not on the entire medical record but, on a selective reading of the record.

Accordingly, DAV opposes the proposed changes in this section.

Section 8.
Hearings.

DAV supports the provisions of paragraphs (a), (b) and (c). DAV supports those provisions of paragraph (d) which allow for hearings through picture and/or voice transmission by electronic or other means, provided these types of hearings are not used to exclude the veteran from obtaining an in person hearing if he or she so desires. However, DAV recommends the following changes to paragraph (d):

1). Strike the phrase "at the request of the Chairman," in the first line of (d); and

2). Strike the phrase "the Chairman may, at his or her discretion, afford the appellant" and insert in lieu thereof "the appellant may be afforded".

Section 9.
Table of Contents.

DAV is opposed to the proposed changes in paragraphs (a) and (b) renaming the section titles "Assignment of appellate matters" and "medical opinions," respectively.

Section 10.
Effective date.

DAV strongly urges changing the language proposed in paragraph (0)(1). This proposed language would weaken the existing law on consideration of issues on the basis of difference of opinion. Under 38 C.F.R. Section 3.104, a final decision may not be revised on the "same factual basis" except as "provided in Section 3.105" which includes difference of opinion, Section 3.105(b). It is made clear by 38 C.F.R. Section 3.400(h)(2) that review under Section 3.105(b) may be initiated by "an application for reconsideration." The proposed language in (0)(1) would restrict consideration under difference of opinion, sought by the veteran, to cases in which the veteran could produce new and material evidence as provided in 38 USC Section 5108. In most cases, if the veteran can produce new and material evidence, he need not resort to Section 3.105(b).

Accordingly, we recommend striking everything in subparagraph (1) following the word "by" in the first line and inserting in lieu thereof:

"a request of the veteran or his representative for review or a motion for reconsideration by the Board, the date the Department of Veterans Affairs or Board received such a request or motion."

* * *

Mr. Chairman, in testimony before this Subcommittee on April 21, and May 6, 1993, DAV presented its views regarding the problems VA is encountering in providing timely VA benefit determinations and changes needed in the adjudication and appeal processes in order to provide America's veteran population with quality decisions in a timely manner. In preparing for that testimony, DAV convened a round-table discussion with: DAV National Service Officers, National Appeals Officers and Judicial Appeals Representatives; VA Regional Office Adjudication Officer, Rating Board Specialists, and a hearing officer; and Majority and Minority staff from the House and Senate Veterans' Affairs Committees.

In addition, at your urging Mr. Chairman, DAV and several other veterans' service organizations submitted to you a number of recommendations on how to improve the adjudication and appeals processes.

Presently, DAV is participating on the Veterans Benefits Administration (VBA) Blue Ribbon Panel on claims processing along with representatives from VBA, veterans' service organizations, the BVA and General Counsel. Their objective is to develop recommendations to reduce the backlog of claims and improve the timeliness of claims processing.

Mr. Chairman, the ideas for positive changes in the VA adjudication and appeals processes are out there. The time to act upon them is now.

Mr. Chairman, we would also ask that VA conduct a pilot project at a number of Regional Offices incorporating many of the VSO recommendations. Allowing Regional Office directors who participate in this pilot project to incorporate the veterans' service organization recommendations into their Regional Office operations, we believe, will give the Subcommittee adequate information upon which they can evaluate the best approach to solving the intolerable delays in VA's compensation and pension benefits delivery system.

Restoration of DIC Eligibility

Mr. Chairman, on October 5, 1993, we received your letter requesting that the DAV include in its testimony our views on the development of a legislative proposal that would provide "relief" for certain surviving spouses of deceased service-connected disabled veterans who were barred from reinstatement to Dependency and Indemnity Compensation (DIC) by a provision of the Omnibus Budget Reconciliation Act of 1990 (OBRA).

Mr. Chairman, we are delighted to provide our views on this important matter. Quite simply, we strongly support restoration of the above cited DIC entitlement and we are most pleased to hear that you are "strongly committed" to addressing the issue.

As you are aware, Mr. Chairman, DIC benefits are provided to the eligible survivors of veterans whose deaths occur during active military duty or, in the case of post-service death, whose deaths are attributable to a service-connected disability (notwithstanding the provisions of Section 1318, Title 38,

USC). Prior to OBRA of 1990, in the case of a DIC recipient whose benefits were terminated due to remarriage, such a spouse was eligible to reapply for DIC entitlement if the subsequent, disqualifying marriage ended in death or divorce. OBRA of 1990 contained a provision which eliminated the ability of such spouses to reapply for DIC entitlement.

As you may recall, Mr. Chairman, this particular restriction was one of a number of benefit elimination/reductions that were contained in the 1990 Deficit Reduction Act. Overall, OBRA of 1990 required the VA to reduce various veterans' benefits and services by some $620 million in Fiscal Year 1991, totalling over $3.6 billion by the end of Fiscal Year 1995. Virtually every single VA program was impacted to include those of: compensation, pension, health care, education, housing, and burial. The 1990 Congressional Budget Office's (CBO) estimate for the savings generated by the DIC restriction was $19 million dollars during Fiscal Year 1991, totaling $347 million by the end of Fiscal Year 1995.

Mr. Chairman, while recognizing the realities of fiscal constraints and the difficult position the House and Senate Veterans' Affairs Committees were placed in at the time - that is, being required by OBRA to identify and recommend specific savings in VA expenditures - the DAV, nevertheless, has always viewed this DIC restriction as patently unfair and unwarranted. Most other federal death annuity programs then did not - and still do not - contain any similar bar to reinstatement of benefits following the termination of subsequent marriages. In fact, while OBRA of 1990 was imposing this restriction on the spouses of deceased service-connected disabled veterans, this same law, in other provisions, liberalized death benefit entitlement reinstatement for widows of deceased Central Intelligence Agency (CIA) employees.

We have always felt these DIC widows were singled out for unfair treatment with no consideration being given to the effects of the restriction, other than the fact that it would "save" a specific amount of federal expenditures. Every single DAV National Convention since the 1990 Deficit Reduction Act, including our most recent 1993 National Convention, has approved a resolution calling for removal of the subsequent marriage bar to DIC entitlement. Indeed, this is the official position of our organization on this matter.

Having stated that, Mr. Chairman, I will respond to your request that we comment specifically on three possible modifications to the current bar to DIC reinstatement. They are:

1.) Provide for the reinstatement to VA benefits for an unremarried surviving spouse whose disqualifying marriage was of only a short duration, such as one year or two years.

2.) Provide for the payment of a special death gratuity for unremarried surviving spouses of veterans whose death resulted from service-connected disabilities in a monthly amount equal to the new base rate of DIC ($750), subject to an offset for each dollar of outside income received. Also, permit surviving spouses of veterans who received nonservice-connected pensions to be reinstated to the death pension roles.

3.) Provide for the reinstatement to VA benefits of an unremarried surviving spouse, but at one-third or one-half of the normal benefit rate.

Mr. Chairman, let me state immediately and most forcefully that the DAV would be very much opposed to the application of

any type of "means testing" criteria to any service-connected entitlement program. We view the dollar offset requirement in number two above as introducing just such a means or needs test. Service-connected disability compensation paid to veterans and/or service-connected death benefits paid to surviving spouses and orphans of deceased veterans have never been subject to any outside income limitations. Imposing such a requirement - even in pursuit of providing some form of limited financial relief to surviving spouses - would represent a dangerous precedent harmful to current program integrity.

Regarding the other possible approaches cited above - allowing a partial restoration of benefits and/or allowing restoration of benefits if the subsequent, disqualifying marriage was of a specific, limited duration - we do recognize, given existing financial constraints and pay-as-you-go requirements, that consideration of less than full benefit restoration cannot be removed from the table.

In summation, Mr. Chairman, we appreciate your strong commitment to addressing and remedying this inequity. We thank you and the members of the Subcommittee for your willingness to entertain a meaningful modification of the current bar to DIC reinstatement and we strongly urge such an action be taken.

This concludes my statement, Mr. Chairman. I would be pleased to respond to any questions you may have.

STATEMENT OF

LARRY D. RHEA

DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION,
PENSION AND INSURANCE

COMMITTEE ON VETERANS AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

ON

H.R. 1796, H.R. 2341,

THE VETERANS APPEALS IMPROVEMENT ACT OF 1993,

AND

DEPENDENTS INDEMNITY COMPENSATION

FOR CERTAIN SURVIVING SPOUSES

OCTOBER 13, 1993

Mr. Chairman, the Non Commissioned Officers Association of the USA (NCOA) appreciates the opportunity to testify on the important veterans legislation that is under consideration this morning. We further extend our sincere thanks to you and the subcommittee members for your past efforts to ensure that veterans and their families are provided for and that they receive the best possible service. In the Association's view, the manner in which a Nation treats it armed forces veterans is a strong statement regarding the moral fiber of that Nation and its people. NCOA strongly believes the veterans of this Nation and their families have given their utmost when answering the call to duty and, in return, they have earned and deserve the best our Nation can provide.

H. R. 1796

MEDAL OF HONOR ROLL

Serving in the Armed Forces of the United States has held, and deservedly so, a place of distinction and great honor throughout history. While all men and women who have served are worthy of praise for their service and sacrifice, there exists an elite group of veterans who have displayed conspicuous gallantry and intrepidity at the risk of life, above and beyond the call of duty, in actual conflict with an opposing armed force. It is vividly clear to anyone who reads the names on the Congressional Medal of Honor Roll that the cost of their service, sacrifice and courage was often their own lives.

In 1958, Public Law 85-857 allocated a nontransferable monthly pension to surviving members of the Medal of Honor Roll at a rate of $100. The monthly special pension was increased to $200 in 1978. **No adjustments have been made in nearly fifteen years and, in today's economy, the $200 authorized in 1978 has eroded by more than 75%.**

H.R. 1796 would raise the monthly pension authorized in Title 38 from $200 to $500 for the 204 survivors whose names appear on the Medal of Honor Roll. Like the patriots whose names appear with them, all have served their country with dignity, selfless honor, and uncommon valor. These 204 Medal of Honor recipients have asked for nothing nor will they because such is not

within their dignified nature. Nonetheless, the obligation is not lessened to ensure that their heroic service to the Nation is adequately recognized. **NCOA strongly supports H.R. 1796 as a matter clearly within the spirit of the special covenant that exists between the government and the surviving 204 members of the Medal of Honor Roll.**

H. R. 2341

VETERANS' COMPENSATION AMENDMENTS

NCOA has reviewed and fully supports H.R. 2341, the "Veterans' Compensation Rates Amendments of 1993" that provides Cost of Living Adjustments (COLA) to the disability compensation of veterans with service-connected disabilities and adjusts the rates of Dependency and Indemnity Compensation (DIC) for survivors of such veterans. NCOA has testified before this subcommittee on previous occasions regarding these very issues. Today, as on previous occasions, the Association restates its position of providing all DIC beneficiaries, including old law DIC recipients, a full COLA.

VETERANS' APPEALS IMPROVEMENT ACT OF 1993

NCOA further appreciates the efforts undertaken by the subcommittee and the DVA regarding the Veterans' Appeals Improvement Act of 1993. The Association has and will continue to aggressively support any legislative initiative that improves the process by which veteran claims are submitted and processed, or enhance the procedure for adjudication and appeal of such claims.

Clearly, all who are involved or interested in improving the appeals process share a set of common objectives: (1) reverse the declining productivity and, (2) improve response time to appellants. Along with these objectives, the Association wants to clearly restate its commitment to the individual veteran. It is within the context of the individual veteran that the Association reviewed the proposed legislation submitted by the DVA. Therefore, mindful of common objectives and the individual veteran, the Association offers the following comments and sectional analysis of the DVA proposal.

SECTION 2, COMPOSITION OF THE BOARD OF VETERANS APPEALS.

Sec. 2(a) would remove the existing 67-member limit on the number of BVA members. NCOA has no objections to this change and believes that the number of BVA members realistically should be constrained only by the caseload requirements.

Sec. 2(c) would redesignate temporary board members as acting board members and remove the length of service restrictions currently placed on temporary members It is unclear how this change substantially improves the existing law. Therefore, the Association recommends that the current provisions be retained.

SECTION 3, ASSIGNMENT OF MATTERS BEFORE THE BOARD.

NCOA agrees with and supports the intent of Section 3 to empower the Chairman with authority commensurate with assigned responsibilities. However, the Association does not agree with the proposed finality of the Chairman's authority regarding review of assignments of matter or decisions on any motion. Specifically, the Association does not agree with the statement which reads: "Any such assignment by the Chairman may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise." **The Chairman is bound by existing laws and Court of Veterans Appeals (CVA) rulings and, therefore, assignment of matters before the board or decisions on any motion should be subject to scrutiny.** Therefore, the Association recommends that the above quoted sentence be stricken from Section 3.

SECTION 4, DETERMINATION BY THE BOARD.

As with Section 3, the Association is concerned with the proposed finality of BVA decisions in what appears to deny the currently accorded appeals process to CVA. The proposed wording of Section 4(a)(a)(1) also appears to place a disproportionate burden on the individual veteran regarding knowledge of all laws and regulations that may be implied in an appeal. **NCOA is concerned that there appears to be a continuing inclination to keep tinkering with the "benefit of doubt" rules that pertain to veterans. NCOA will oppose any change that falls**

short of resolving questions of doubt in favor of the veteran. Veterans should be accorded all possible assistance and every reasonable doubt as presently provided in law.

SECTION 5, JURISDICTION OF THE BOARD

The Association has no objections to the changes proposed in Section 5.

SECTION 6, APPELLATE PROCEDURES

The Association has no objection to the change proposed in Section 6.

SECTION 7, MEDICAL OPINIONS

The Association is opposed to Section 7 since it overturns the CVA mandated requirement to use independent medical opinions to determine complex or controversial medical questions. **In the Association's view, Section 7 emphasizes, to the potential detriment of the appellant, the use of VA doctors or other federal medical experts and thereby ignores that it was VA doctors who did not support the veteran's original claim and subsequently denied the claim in the BVA review of medical evidence.**

SECTION 8, HEARINGS

The Association has no objections to the changes proposed in Section 8.

SECTION 9, TABLE OF CONTENTS

NCOA has no objections to these simple changes.

SECTION 10, EFFECTIVE DATES OF AWARDS BASED ON DIFFERENCES OF OPINION.

NCOA is adamantly opposed to the changes proposed in Section 10 to limit awards based on differences of opinion. Arbitrarily setting the effective date of an award on the date the Chairman or Vice Chairman of the Board approved the award indicates a desire to monetarily penalize the veteran for what may have been a clear and unmistakable erroneous decision in the

first place. **NCOA strongly believes that benefit payments should be retroactive to the date of the erroneous prior decision. That is the only fair, right, and equitable thing to do.**

NCOA has previously opposed efforts to permit one member signature and decision on BVA cases. However, in context with the objectives enumerated earlier, the Association has reconsidered its position on this issue. In supporting the one-member decision option, the Association believes that response time and productivity will improve which should result in a win-win situation for the veteran and DVA.

REINSTATEMENT OF DEPENDENTS INDEMNITY COMPENSATION (DIC) FOR CERTAIN SURVIVING SPOUSES

Since the provisions of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) that terminated DIC for certain surviving spouses were enacted, NCOA has sought legislative relief to lessen the current, permanent bar to reinstatement. The Association believes that it is now vividly clear that OBRA 90 has had a devastating effect on many individuals. For that reason, the Association appreciates the initiative of the distinguished Chairman to fashion a legislative remedy to fix the problem imposed by OBRA 90. Now, confronted with the realistic situation that full reinstatement is extremely remote, the Association offers the following comments concerning the three legislative remedies that the Chairman has proposed.

Concept 1 would provide for the reinstatement to VA benefits for an unremarried surviving spouse whose disqualifying marriage was of only a short duration, such as one year or two years. The Association believes that the reaction of those who would be reinstated through this concept would be very positive indeed. On the other hand, this concept is fraught with problems and inequity. Arbitrarily selecting one year, two years or even five or ten years simply won't work. In so doing, large numbers of surviving spouses would still suffer the inequity imposed by OBRA 90. While this concept fixes the problem for some, it arbitrarily ignores the devastation endured by others and treats the duration of a disqualifying marraige as the sole factor for reinstatement.

Concept 2 would provide for the payment of a special death gratuity for unremarried surviving spouses of veterans whose deaths resulted from service-connected disabilities in a monthly amount equal to the new base rate of DIC ($750), subject to an offset for each dollar of outside income received. Concept 2 would also permit surviving spouses of veterans who received non-service-connected pensions to be reinstated to the death pension roles.

On the surface, Concept 2 appears to have some merit since it would provide remedy to those surviving spouses who would have the greatest need. Here again though, as with Concept 1, the determination for reinstatement is based on an arbitrary factor to remedy the inequity for only a select few but it does not fix or address the problem for the total population of surviving spouses affected by OBRA 90.

Concept 3 proposes reinstatement to VA benefits of an unremarried surviving spouse, but at one-third or one-half of the normal benefit rate. While this concept falls far short of the Association's goal of full reinstatement, the merits of Concept 3 outweigh those of either Concept 1 or 2. Foremost, Concept 3 treats all surviving spouses impacted by OBRA 90 as a cohesive group. There are no arbitrarily imposed conditions in Concept 3 that would solve the problem for some while ignoring the plight of others. In the Association's view, Concept 3 treats the entire population of surviving spouses under discussion as equals. NCOA believes that equal treatment under the law is crucial to any legislative remedy.

As the subcommittee deliberates this difficult issue, the Association requests that one other alternative concept be considered. In consonance with the Association's objective of full reinstatement for all those affected by OBRA 90, NCOA requests that such be considered but on a one-time only basis. In the Association's view, this would undo the havoc of OBRA 90 on a totally fair and equitable basis. The Association's proposal would also restore some degree of meaning to the financial planning decisions and assumptions made by many surviving spouses prior to OBRA 90.

This subcommittee is fully aware of the extremely harsh impact that OBRA 90 imposed on many

surviving spouses. **Therefore, NCOA requests that the subcommittee consider the Association's recommendation for restoration on a one-time only basis. If that is not possible, the Association supports Concept 3 but urges the subcommittee to seek enactment at one-half the normal benefit rate.**

CONCLUSION

In closing, NCOA trusts that the comments offered will be considered within the constructive spirit intended. In our mutual efforts to do what is right for veterans, their dependents, and surviving spouses, the Association is grateful for the opportunity to testify on these important issues. Your consideration of the Association's concerns and recommendations and for your continuing, steadfast support is appreciated deeply.

Thank you.

STATEMENT OF

THE

NATIONAL ASSOCIATION OF MILITARY WIDOWS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

COMMITTEE ON VETERANS AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 13, 1993

PRESENTED BY

JEAN ARTHURS

DIRECTOR, LEGISLATIVE AFFAIRS

The secretary of the Army stated, "when the government contracts for the serviceman, it really contracts for the entire family unit, as it includes all the family in the adjusted lifestyle, the 24-hour call, the perils and discomforts' with readiness to serve anywhere, to go to hazardous places at a moment's notice. The service wife is expected to be ready to follow her husband to any assignment, or to remain cheerfully behind, and to alwyas be an ambassador for the United States. These women have proven to be some of the best emissaries this country has ever had."

Clifford Alexander, Sec of the Army

To care for him who has borne battle, and his widow, and his orphan.

A. Lincoln

I am Jean Arthurs, president of the National Association of Military Widows **(NAMW)**, and we thank you for allowing us to provide testimony today. We appreciate that over the years the work of this committee has benefited a great number of our widows whose servicemen died in the service of our country.

Our association is an all-volunteer military widows organization and our membership represents all rates and ranks of career and non-career service widows of the seven uniformed services, Regular and Reserve. Our broad base has made us cognizant of the continuing need to help affect equitable legislation on behalf of these fine women who have served our country so well.

BROKEN PROMISES FOR DIC WIDOWS

The principal veterans initiative for **NAMW** is reinstatement of Dependency and Indemnity Compensation (DIC) for widows of veterans who were adversely impacted by the Omnibus Budget Reconciliation Act of 1990 (OBRA 90). These widows trusted their futures to a statutory commitment made by Congress in 1970, which guaranteed them that DIC would be reinstated if they remarried and then lost their second or subsequent spouse due to death or divorce. There was a dual objective of the 1970 law: to motivate DIC widows to remarry, removing them from the DIC rolls and thus saving the government significant sums; and to bring Veterans' benefits more in line with the remarriage provisions of other federal programs.

OBRA 1990 abrogates the 1970 commitment without providing a grandmothering provision to protect the interests of those remarried widows who did not have insurance or other alternatives to replace the loss of DIC, which was the bedrock of their estate plans. Since then we have heard of many tragic cases resulting from that law -- widows whose husbands died shortly after its enactment, are terminally ill, uninsurable, or widows who have entered into irrevocable prenuptial agreements. In one particularly odious case, an abused spouse is afraid to leave her husband because she has no financial resources without DIC. Another distraught widows says, "I am 76 years old and after I paid my regular monthly bills I have exactly $4.78 in the bank for the rest of the month! Naturally I have to depend upon my children for groceries for the rest of the month. If I could still draw my DIC I could remain independent as was the plan my deceased husband had for me." A more in-depth review of the tragic ramifications of OBRA 90 is at the enclosure. Congress showed compassion for certain categories of these widows last year. DIC reinstatement was approved for those who initiated divorce proceedings before November 1, 1990 and later finalized those divorces. In addition, the two year survival period for entitlement to military Survivor Benefits was waived for DIC widows remarried to military retirees who enroll in the program during the one year open enrollment period which ends on March 31, 1993.

It's instructive to note that these ameliorating provisions were enacted without regard for any means test for the widows to qualify for the DIC benefits. The cause of the remaining widows, those who lose their second or subsequent husbands due to death or divorce after October 31, 1990 -- is no less compelling. NAMW belives that equity can only be promoted if they too are entitled to DIC reinstatement without means testing either. Once the injustice caused by OBRA 90 is rectified, the principal of shared sacrifice, in the interest of deficit reduction, can be imposed on them as well. For example, if future cost of living adjustments (COLAs) are capped, frozen or delayed, they too would make a proportional contribution to the effort.

Congress was confronted with extraordinary time constraints and budget pressures when the OBRA law was enacted in 1900. Now that the legislative furor has diminished and the moral and financial implications of that decision have become evident, there must be a better solution than to disallow DIC reinstatement. It is inconceivalbe to believe that the distinguished members of Congress who have protected the interests of the veteran and his family unwaveringly for years would knowingly hurt those surviving spouses of our Nation's heroes, who based their financial futures on the good faith commitment made to them by this Nation.

The National Association of Military Widows recommends that DIC widows who were remarried before November 1, 1990 be "grandmothered" under provisions of the Veterans Disability Compensation Act of August 12, 1970, which had guaranteed them reinstatement for some twenty years. Congress also should direct the Department of Veterans Affairs to notify all DIC beneficiaries of the provisions of OBRA 90 as modified.

The Retireed Officers Association supports the testimony provided here today.

HOW REMARRIAGE AFFECTS FEDERAL SURVIVOR PROGRAMS

The chart below shows the current federal survivor programs and how the programs are affected by remarriage and by termination of a second or subsequent marriage. The VA's Dependency and Indemnity Compensation (DIC) is the only program that does not reinstate benefits when a subsequent marriage ends.

FEDERAL PROGRAM	EFFECTS OF REMARRIAGE	EFFECTS OF TERMINATION OF REMARRIAGE THROUGH DEATH OR DIVORCE
DIC BENEFITS	■ Terminates benefits permanently unless marriage is voided or annulled.	■ Not reinstated.
CIVIL SERVICE SURVIVOR BENEFITS	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.
FEDERAL EMPLOYEES COMPENSATION ACT	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.
RAILROAD RETIREMENT	■ Remarriage under 60 (50 if disabled) terminates benefits. ■ Remarriage at 60 or over (50 if disabled) has no effect.	■ Benefits reinstated at reduced rate. ■ Not applicable.
SOCIAL SECURITY	■ Remarriage under 60 (50 if disabled) terminates benefits. ■ Remarriage at 60 or over (50 if disabled) has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.
MILITARY SURVIVOR BENEFIT PLAN	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.

NATIONAL ASSOCIATION of MILITARY WIDOWS
4023 — 25th ROAD NORTH
ARLINGTON, VIRGINIA 22207

TELEPHONE: 703 — 527-4565

October 7, 1993

Mr. Jim Slattery
Chairman
U.S. House of Representative
Subcommittee on Compenstaion,
Pension and Insurance
335 Cannon House Office Building
Washington, DC 20515

Dear Mr. Slattery:

In regard to your letter of October 5, 1993 our response is as follows:

1) To provide for the reinstatement of VA benefits for the unmarried surviving spouse whose disqualifying marriage was of only a short duration, such as one year or two years.

Our response is: as noted previously, that the law allowing remarriage was in effect for over twenty years, and confining the reinstatement for such a short period of one or two years would be unfair to those who have relied on the statute in forming their plans twenty years ago.

2) To provide for the payment of a special death gratuity for the unremarried surviving spouses of veterans whose deaths resulted from service-connected disabilites in a monthly amount equal to the new base rate of DIC ($750), subject to an offset for each dollar of outside income received. Also, permit surviving spouses of veterans who received non-service-connected pensions to be reinstated to the death pension roles.

We believe Congress showed compassion last year for the DIC reinstatement approved for those who initiated divorce proceedings before November 1, 1990 and later finalized the divorce. As a solution this approach would subject this group to the unfair means test and would create discrimination within the group of DIC widows.

3) Provide for the reinstatement to VA benefits of an unremarried surviving spouse, but at one third or one half of the normal benefit rate.

This cannot be considered as a solution as it again penalizes these widows in a monetary way. This is an unequitable and discriminating solution for the widows through no fault of their own but due to the mistake of OBRA 1990.

Our belief is that this is not a dollar and cents issue. The OBRA 1990 decision caused much frustration and suffering in the lives of the affected widows.

With the present horror taking place in Somalia surely Congress has feeling to realize these widows have suffered with the death of their spouses combined with the last three years of the limitations imposed by DIC. It is time to give these widows back their rightful DIC compensation.

As Abe Lincoln said, "to care for him who has borne the battle, and his widow, and his orphan".

Sincerely,

Jean Arthurs

Jean Arthurs
President
Legislative Director

H.R. 2341

PRESERVE YOUR COLA FLEXIBILITY

For several years there have been proposals to automatically tie Veteran's COLA to the annual increase in the Consumer Price Index (CPI) (i.e., essentially the same COLA process now applicable to military and Federal civilian retirees and Social Security annuitants).

We view this proposal as flawed because the annual adjustment to veterans compensation programs should be more than an inflation adjustment. The current procedure also considers a wide range of other factors such as productivity in the private sector and veterans' lost earnings power. The absence of these Congressional yardsticks militates against these proposals.

There's another important reason for preserving the flexibility of the ad hoc process. Specifically, we believe that it is a beneficial policy for the Committees on Veterans Affairs to have an important "must pass bill" each year. By doing so, either committee may use the process to promote passage of other critical legislation that might otherwise lie fallow.

For the foregoing reasons, **NAMW** urges you to reject any consideration to automatically link VA COLAs to the CPI.

ADJUDICATION OF VETERAN'S BENEFITS

In response to the draft legislation intended to improve the adjudication of veteran's benefits claims and appeals - **NAMW** is greatful that there is now hope for correction and improvement in the administering of veterans and widows claims.

When one's existence rests on the judgement of one individual over another almost identical claims may receive opposite findings, fair or not! The Shakespearian phrase "to swallow a camel and strain on a gnat" expresses the peril of military widows who have been vulnerable to the dicusions of the regional and national offices.

The fact that the sponsor fought the wars and served his country should give the widows' claim the benefit of the doubt.

TWO MORE FIXES

Last year the committees on Veterans Affairs changes the formula for awards of Dependency and Indemnity Compensation (DIC) to "flat-rate" payment system (H.R. 5008, P.L. 102-568, October 29, 1992). An additional monthly amount is paid for each child as well as an additional $165 for survivors of veterans rated totally disabled for a continuous period of at least eight years immediately preceding death. We were extremely disappointed that H.R. 5008 did not include any additional disability credit for DIC purposes for the spouses of memebers who die on active duty. **NAMW** joins in the argument that active duty death consitutes the ultimate total disability and it should be recognized by an additional monthly payment equal to current rate for total disabilty.

The same law permitted the active duty military to increase Servicement's Group Life Insurance (SGLI) up to an additional $100,000, to buy Veterans' Group Life Insurance (VGLI) up to a maximum of $200,000 and made VGLI a renewal term plan.

Those excellent provisions were a great benefit to active duty personnel, particularly those whose spouses would receive less monthly payment through the new "flat-rate" DIC. The law also grandmothered current DIC recipients under the old payment formula or the new flat rate, whichever is higher. The one group which has been left out in the cold are those servicemembers who have already separated from active duty, whodse SGLI was limited to $100,000 or less, or whose VGLI terminated. As a cost neutral option, **NAMW** recommends that P.L. 102-568 be modified to allow former servicemembers to buy into the VGLI term plan at the same amount of coverage they carried as SGLI while on active duty.

MEDICARE SUBVENTION:

A WIN-WIN HEALTH INITIATIVE

VA medical facilities and Military treatment faxilities are not unlike the private sector in at least one significant respect -- the facilities are not operating at maximum capacity. This phenomenon results because of many factors including: lack of physicians, nurses or ancillary personnel; and lack of necessary high-tech equipment. The staffing and equipment problems could be solved by an infusion of funds to hire or contract for more personnel, whereas a legislative change could permit VA facilities to maximize their underutilized capacity.

To facilitate maximum use of VA and DoD medical facilities without calling for additional appropriated funds. TROA and several other associations have developed a reimbursement concept we refer to as "subvention". This procedure would allow a retiree 65 or older to be treated in a DVA or DoD medical facility with the cost, at a discounted rate, paid by Medicare. Essentially then, "subvention" involves the transfer of funds from one federal department to another. The desired result of this concept would be that military and VA Facility commanders would be motivated to increase patient-load knowing that the reimbursement they received would permit them to further expand the capacity of their facilities. A commander's ability to use the additional funds to hire staff or purchase necessary equipment is an essential underpinning of the program. Without it, the ability to capture more care in-house would not be realized.

Subvention would save taxpayer dollars because treatment in VA or military faxilities generally is more cost-effective that in comparable civilian facilities. Another plus is that patients would receive treatment in medical facilities and through a system with which they are familiar.

Thank you for your kindness in allowing our association to testify today. I will be glad to answer any questions.

Jean Arthurs

Jean Arthurs
President

Dear Representative Montgomery:
It is my understanding that on or about February 25, 1993, the issue of military Dependency and Indemnity Compensation (DIC) will be coming before your Committee for reconsideration.

I would respectfully request that you, individually, and the Committee, as a whole, recommend to the 103rd Congress that they immediately re-examine the action taken under the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) with respect to the elimination of DIC for those who were formerly entitled to it due to the death of a spouse who made the supreme sacrifice for our nation.

As a widow who has been adversely affected and severely impacted, both financially and emotionally by that fateful decision in 1990, I implore the present Congress to address the issue and take prompt measures to restore both equity and trust. Inasmuch as my personal situation may be unique, I take the liberty of giving a brief personal background.

On March 22, 1958, my then husband, Ltjg. Charles Ernest Seager (526975/1310) (234-52-3213), was missing at sea and declared dead on April 16, 1958. For several years I received DIC; it was my financial lifeline while completing studies for a Bachelor of Science degree.

In 1961 I remarried - to another Naval Aviator, Robert Frank Splitt (351-24-8818) - and he retired in January 1973 with 22 years service. Prior to his retirement we made a deliberative decision, based upon professional advice, not to participate in the then new Survivor Benefit Plan (SBP) due to the fact that under the rules the DIC reinstated from my first husband and the SBP from my second husband would be subtracted one from the other, yet the SBP premium would remain at 100%. With three years of intensive and expensive re-training in the civilian world for my husband in the offing, it was hardly a financially sound proposition to pay 100% premium for less than 100% benefit. Thus, in our long range planning we relied on the DIC I would receive to pay my basic expenses; my needs and wants are simple. When my second husband's loans were repaid and his business began making a profit, both of us put in thousands of hours of "pro-bono" work for the betterment of the nation, state and community. In addition, a graduate scholarship, youth campships and educational awards were established and public libraries benefited from hundreds of professional books. We had (and I still have) a personal commitment to make things a bit better for future leaders.

Without personal notice to me, my DIC entitlement was extinguished basically because my second husband I were still married - we had not divorced and he had not died prior to an arbitrary date set by Public Law 101-508. To me, it is a most cruel and unusual punishment in a nation that cherishes family values to punish a person who was fortunate and had two "best friend" husbands. Truly, I believe the action was unconscionable, for it betrayed the government's word to military personnel and thus tarnished the government's honor.

My second husband and I became aware of this inequitable situation when it became necessary to marshal our assets when he was diagnosed with cancer in August 1991. SBP was not available to us and would not be until open enrollment in April 1992. And then, according to a Department of Defense letter, my second husband would have to survive for two years in order for me to be eligible for benefits. He died on his 61st birthday, barely two months after the SBP "open window." He knew in March 1992 that his chances of survival were less than 5% for a two year period, and since we were told there would be no rebate on monies put in, he did not join SBP. I would tell you he died anguished over my financial future and saddened by what he perceived to be a breach of trust.

Being too young for the Social Security's widow option, unemployed, and denied the promised DIC, I am now reduced to an insufficient level of income to pay for my food, home, utilities, clothing, transportation, medical bills and insurance. Nor will there be income for the long term care costs that have been planned for and are needed. I have no living children or siblings to help with either finances or long term care and my opportunities in the current business world are slim to none, as there is no income for re-entry education.

In sum, having long been a productive member of our society, I find my situation of being financially and emotionally devastated by a past Congressional action to be distressing and depressing. I hopefully and trustfully rely on your members to search their souls and then, in the name of fairness, initiate the legislative process to right a wrong and restore DIC to those of us who were entitled and relied upon the government's word - to our detriment.

I will be in the Washington D.C. area in April for the burial of my second husband and our son in Arlington National Cemetery. During that time I would be honored and pleased to meet with you or your staff or give testimony, should it be appropriate. Should you wish to initiate a conference, please advise by notifying me at the above address or telephoning (813) 337-3286.

Respectfully

Virginia W. Splitt

Dear Jean Arthurs, May 7 1993

Subject: Eligibility to Veterans Administration Benefits

on April 11, 1993 I became widowed and called a toll free number and asked for correct form to get reinstated reverting back to my prior widow's Dependency & Indemnity Compensation (D I C) I was informed that I am not eligible to the D I C benefits due to a law change in 1990. I am depressed about this statement and asked for a letter on the facts of the ruling change. I have not received anything. — I went to Shepperd air Force base and talked to Veterans Counselor, Delilah Washburn. She read the letter I have (dated august 2, 1991 from V.A. center, Waco, T saying if I wanted to remarry the HR 372 had become law and provides that a widow who has remarried can revert to her earlier eligibility to Veterans administration benefits when her second marriage is terminated, either by death or divorce). and told me not to give up on a 1st appeal. She did make a copy of my letter and attached it to the claim filing for my reverting back to my D. I.C. benefits.

Before I remarried I made sure I was able to revert and I understood that I had the guaranty and now they tell me I am not qualified due to a law change in 1990. To me the word "entitlement" means the guaranty on insurance benefits to a veteran or his widow. — would you please help me on this matter of getting my D I C benefits reinstated.

Very truly Yours
Oleta LeClaire

Oleta Leclaire
821 E Us Highway 69
Denison TX 75020

"In April 1993 I became widowed and called a toll free number and asked for the correct form to get reinstated reverting back to may prior widow's Dependency & Indemnity Compensation (DIC). I was informed that I am not eligible to the DIC benefits due to a law change in 1990. I am depressed about this statement and asked for a letter on the facts of the ruling change. I have not received anything. To me the word entitlement means the guaranty on insurance benefits to a veteran or his widow."

"In these desperate deficit-cutting days, the military and retirees find themselves in the same vulnerable position as the elderly motorist on a superhighway where the minimum speed was 40 mph. he was traveling at 15 mph. when a motorcycle cop pulled him to the side and said, 'You know why I stopped you, granddad?' The old gentleman replied 'I sure do. I was the only one you could catch!'"

THEY EARNED MORE THAN BROKEN PROMISES

In 1990, Congress enacted a law that placed many remarried widows of disabled veterans at dire financial risk.

By Col Paul Arcari, USAF-Ret., Director, and Col William Hart, USMC-Ret., Deputy Director, *Government Relations*

For more than two years, widows—many of them destitute—of disabled veterans have written to The Retired Officers Association expressing outrage, disbelief and, in some cases, panic. These women are financial victims of a little publicized 1990 law that abruptly terminated reinstatement of Dependency and Indemnity Compensation (DIC), a form of survivor benefit paid by the Department of Veterans Affairs (VA) to survivors of military members who die of service-connected injuries or illnesses.

While a widow forfeits this compensation if she remarries, she was, until passage of the 1990 law, eligible for reinstatement of DIC if her second or subsequent marriage ended. But Congress terminated the practice of DIC reinstatement with the Omnibus Budget Reconciliation Act (OBRA) of 1990, which became effective November 1, 1990. In doing so, legislators reneged on a 20-year statutory guar-

MS JEAN ARTHURS
National Association of Military Widows
4023 25th Road
Arlington, VA 22207

Dear Ms Arthurs:

I am weary on the high-handed treatment we widows receive constantly from our lawmakers in Washington. We need to find out what is happening before it is too late. Our benefits are being eroded and lawmakers must feel that we won't complain. Let me know what you are doing to help relieve this injustice and to show the rest of us what we must do to be on guard.

Cordially,
Nancy Sodeman
Nancy Sodeman

BROKEN PROMISES

"The service promised our husbands that their families would be taken care of in the event of their deaths, and Congress took it away without even notifying women like myself."

antee of DIC reinstatement and shattered the foundation upon which many widows based their estate plans.

Congress has since put forth measures to address the needs of certain DIC recipients left in the lurch. But the vast majority of an estimated 4,000 affected widows remain ineligible for reinstatement. Moreover, DIC is now the only federal survivor program without reinstatement guarantees.

Jean Mailer of Santa Rosa, California, is one DIC widow facing impoverishment. Mailer's first husband was a major and an 18-year Marine Corps veteran who died on active duty in 1957. In 1973 she remarried, this time to a World War II veteran who was not a military retiree. On October 2, 1990, when her second husband's health was failing, she visited a Veterans Service Office in California where she was assured that she would be eligible for reinstatement of DIC if her current husband died and that the amount of her monthly benefit at that time would be $834 (see current rate chart, p. 40).

Mailer's husband died after emergency heart bypass surgery on November 17, 1990, less than three weeks after OBRA 1990 became effective. She was informed on November 27, 1990, that she was not eligible, as of October 31, 1990, for DIC reinstatement.

"I consider it vital and necessary to have my benefits reinstated under DIC. I am in my 79th year. Care facilities in California, which is my home, are charging $3,500 per month and who knows how much higher that can go!"

Elizabeth Dean of Yorktown, Virginia, is another stranded survivor. She became a DIC widow when her first husband died on active duty in 1968. Her second husband participated in the military Survivor Benefit Plan (SBP), a contributory plan that pays a portion of military retired pay to survivors. But his named beneficiary was his former spouse.

Since Dean was assured when she remarried in 1987 that she could reinstate DIC payments if her husband predeceased her, she entered into a prenuptial agreement that left assets brought into the marriage to their respective children. Then her husband died on February 7, 1991.

"There is a total of 44 years of active duty service between my two husbands," Dean says. "One of the major reasons both men made a lifelong career out of military service was that their families would be taken care of in the event of their deaths. The service promised this to each of them, and Congress took it away without the courtesy of even notifying women like myself who had previously received benefits for a long, long time.

"I am sure that this will sound very callous, but had I known that I could not reinstate my DIC benefits, I would never have been so financially irresponsible as to remarry," continues Dean. "I loved my husband dearly, but I know he would have understood my feelings, and we would have had an opportunity to buy insurance or make other financial arrangements had I been notified of the new laws regarding DIC benefits."

Reinstatement of DIC is critical to the financial well-being of these widows. The reasons for reinstatement are as compelling today as when Congress incorporated the guarantee in the Veterans Disability Compensation Act on August 12, 1970, effective January 1, 1971. According to the 1970 VA report:

Permanent bars to reinstatement of benefits have produced harsh results. For example, hardship results if the remarriage is short-lived and the widow emerges from the subsequent marriage in a worse economic position than before. In many instances, the widow has spent most of her life as the wife of the veteran, as a housewife and mother, and has been unable to engage in any outside employment to establish entitlement to retirement or other old age benefits in her own right. The permanent termination of Veterans Administration benefits upon her remarriage at an advanced age frequently places her in precarious circumstances when death or divorce of a subsequent spouse follows.

Moreover, continued the report, *DIC reinstatement for widows of veterans follows the trend established by similar legislation authorized for widows seeking Social Security benefits or civil service retirement benefits. It represents a logical and equitable extension of the theory on which benefits are provided for widows of veterans.*

Termination of DIC reinstatement by OBRA 1990 was

"My husband served 21 years 9 months and 2 days for the United States Air Force and 6 years Civil Service - I receive $174.00 from Civil Service a month but not a penny from Uncle Sam. He was Uncle Sam's man and served all over the world for his country. This is a great injustice."

"My husband was a World War I veteran discharged with the rank of Sergeant Major. He received a 100% disability from the VA when he was 65. He died in 1976 at the age of 88. I am presently receiving $10.93 a month. I am 87 years old and it seems to me that this widows pension is very small. I have had no satisfaction by calling the VA to see what other monies I may be entitled too."

HOW REMARRIAGE AFFECTS FEDERAL SURVIVOR PROGRAMS

The chart below shows the current federal survivor programs and how the programs are affected by remarriage and by termination of a second or subsequent marriage. The VA's Dependency and Indemnity Compensation (DIC) is the only program that does not reinstate benefits when a subsequent marriage ends.

FEDERAL PROGRAM	EFFECTS OF REMARRIAGE	EFFECTS OF TERMINATION OF REMARRIAGE THROUGH DEATH OR DIVORCE
DIC BENEFITS	■ Terminates benefits permanently unless marriage is voided or annulled	■ Not reinstated
CIVIL SERVICE SURVIVOR BENEFITS	■ Remarriage under 55 terminates benefits ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated ■ Not applicable
FEDERAL EMPLOYEES COMPENSATION ACT	■ Remarriage under 55 terminates benefits ■ Remarriage at 55 or over has no effect on benefits	■ Benefits reinstated ■ Not applicable
RAILROAD RETIREMENT	■ Remarriage under 60 (50 if disabled) terminates benefits. ■ Remarriage at 60 or over (50 if disabled) has no effect	■ Benefits reinstated at reduced rate. ■ Not applicable.
SOCIAL SECURITY	■ Remarriage under 60 (50 if disabled) terminates benefits. ■ Remarriage at 60 or over (50 if disabled) has no effect on benefits	■ Benefits reinstated ■ Not applicable
MILITARY SURVIVOR BENEFIT PLAN	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated ■ Not applicable

a grave injustice to DIC survivors who, like Mailer and Dean, made irreversible financial decisions using entitlement to DIC reinstatement as the baseline for their estate plans. "DIC widows in a second marriage will be, or have been, unfairly penalized and many may be made financially destitute by the change," says Sydney Hickey, associate director for government relations at the National Military Family Association in Alexandria, Virginia.

An opportunity to address the needs of some of these widows arose when retirees who previously declined to participate in the military Survivor Benefit Plan were given another chance during the one-year open enrollment period, which closes March 31, 1993. But the SBP option offered little consolation to widows who lost their spouses before the open enrollment period began or whose spouses were terminally ill and not expected to live long enough to meet the two-year survival period required of new SBP enrollees.

In an act of compassion for DIC widows whose second husbands were ill, Congress modified the SBP law, as part of the 1993 Defense Authorization Act, to eliminate the two-year survival period for those military retirees who are married to DIC widows and who signed up for SBP during the open enrollment period. This action brought relief to some widows; it was too late for Mailer, Dean and others.

Nor did the SBP option help DIC widows who remarried non-military retirees. Not eligible for SBP, these couples must rely on life insurance alternatives. Yet many of their husbands are uninsurable because of terminal illnesses. Others, advanced in years, face prohibitively expensive or unaffordable life insurance premiums. Were it not for their faith in Congress' reinstatement guarantee, these couples would have purchased insurance when they were younger and the rates more affordable.

Alyce B. Shaeffer of Reston, Virginia, is married to a non-military retiree. Her first husband was killed in action in Vietnam in 1968. She remarried about 18 months later. Because of advanced multiple sclerosis she is unable to work or support herself. Her physical limitation requires outside assistance for bathing, cooking, housecleaning and laundry. "Should my husband die before me," she says, "I would be unable to provide for my own welfare."

No one knows exactly how many or, more probably, how

"My husband served active duty from 1921 to 1946. I receive no money from the government because there was no provision made for widows at that time."

"Because of the very low salaries most service men could not afford to prepare for the future. Because they were fighting men they were not so sure there would be a future for them. The wives of the enlisted men said that their husbands had told them that if anything happened to them that the government would take care of the widow. When they found out that they would get nothing they were devastated that they had been abandoned by a government they spent a lifetime serving."

"I work with a retired military man. He and his wife are divorced but had been married 20 years while he was in service. She works and has no dependent children at home but she gets half of his retirement pay. I am 60 years old and have to work two jobs to survive, yet I was also married over 20 years to a military man and instead of divorcing him, he died, so I was not given a choice. Yet, I get nothing."

few DIC widows are remarried to retirees who were eligible for a second chance at SBP. Nor is it clear how many remarried DIC widows are even aware that DIC will not be reinstated if their current marriage dissolves.

"The Department of Veterans Affairs has made no attempt to notify much less explain the law barring reinstatement to remarried DIC widows," says Jean Arthurs, director of the National Association of Military Widows in Arlington, Virginia.

In 1992, Congress took a second step to help address the devastating circumstances caused by OBRA 1990. The Dependency and Indemnity Compensation Reform Act of 1992 contained a provision to allow DIC reinstatement if a divorce or other proceeding to dissolve a marriage commenced before November 1, 1990, and if that proceeding resulted in the termination of the marriage. But this does nothing to help the women whose husbands have died since the law was enacted.

Since enactment of OBRA 1990, no issue has reverberated more loudly through the veterans' community than the denial of DIC reinstatement. Arthurs finds it paradoxical that, "with one hand, Congress is reaching out to the impoverished and downtrodden of the world with hundreds of millions of dollars of relief. But with the other, it is forsaking the widows of veterans who made this nation the dominant world force it is today."

Many hundreds of widows, in consultation with their husbands, planned for their futures in good faith and with the assurance of the U.S. government that DIC could be reinstated. To deny this assurance undermines the credibility of this nation's leaders.

"It's ironic," Arthurs says, "that Congress reformed the DIC system in 1992, going to great lengths and considerable expense to create a flat rate DIC system of $750 a month for all beneficiaries [effective January 1, 1993]. But they ignored widows who have lost their entitlement to DIC reinstatement."

The basic reason for terminating DIC reinstatement, of course, was to save money. But the savings anticipated could fall short of expectations because of unanticipated reactions. Some widows who were contemplating remarriage have placed their decisions on hold because of OBRA 1990, and more will follow. Widows who remain on the DIC rolls tend to decrease the savings contemplated by OBRA 1990.

"DIC widows who remarried after the 1970 law was passed came off the Dependency and Indemnity Compensation rolls for the duration of their second marriage and, in many cases, for life. A look at the financial picture in three to five years might well show that terminating reinstatement of DIC has cost more than it has saved because DIC widows are not remarrying," says Hickey. Conversely, if savings do not materialize, the cost of reenacting reinstatement will be less than initially estimated.

"The final outcome will produce very little savings but result in much hurt and damage to DIC widows," says Arthurs. "After all, these widows must survive and this will bring them to welfare if there is no DIC."

Speaking about remarried DIC widows like herself, Mary Lou Hurst of Gig Harbor, Maine, says, "We saved the government nearly a quarter of a million dollars over the 22 years we have been remarried. Surely, the government won't deny us the financial protection our husbands earned by sacrificing their lives, now that we are older and unable to work."

OBRA 1990 made DIC the only federal survivor benefit program for which benefits are not reinstated upon death or divorce of a subsequent spouse. In most cases, survivor benefits continue even when the spouse remarries after 55 or 60 (see chart, p. 39).

Congress was confronted with extraordinary time constraints and budget pressures when the OBRA law steamrolled through the legislative process in 1990. Now that the legislative furor has diminished and the moral and financial implications of that decision have become evident, Congress has taken two steps to mitigate the effects of OBRA 1990: eliminating the SBP two-year survival period for new SBP enrollees who are married to DIC widows (this option expires on March 31, 1993), and reinstating DIC for any widow whose divorce or marriage dissolution proceedings began before OBRA 1990 became effective on November 1, 1990, and whose proceedings have since been finalized.

Congress should now take the critical third step to revise OBRA 1990. Such a provision would modify OBRA 1990 to grandmother, under the 1970 law, all DIC widows who were remarried to a second or subsequent spouse before November 1, 1990. Further, Congress should direct the VA to notify all DIC beneficiaries of the provisions of OBRA 1990 as modified.

Congress has protected the interests of veterans and their families unwaveringly for years. Many veterans died from injuries or illnesses suffered as a result of service to their country. They left widows who based their financial futures on Congress' commitment to reinstate DIC. Surely these deceased veterans deserve more than broken promises to their widows.

PRE-1993 DEPENDENCY AND INDEMNITY BENEFITS

According to a 1992 law reforming DIC, beneficiaries whose spouses die of service-connected illnesses or injuries on or after January 1, 1993, receive a DIC flat rate of $750 a month. The law grandmothered beneficiaries receiving DIC payments before January 1, 1993. Their monthly payments, as shown below, are based on the grade of the military member at the time of death from service-connected illnesses or injuries, or on the new flat rate, whichever is greater.

GRADE	PRE-1993 DIC	GRADE	PRE-1993 DIC
E-1	$634	O-1	$803
E-2	$654	O-2	$829
E-3	$672	O-3	$888
E-4	$714	O-4	$939
E-5	$732	O-5	$1,035
E-6	$749	O-6	$1,168
E-7	$785	O-7	$1,262
E-8	$829	O-8	$1,383
E-9	$866	O-9	$1,483
W-1	$803	O-10	$1,627
W-2	$835		
W-3	$860		
W-4	$911		

Dear Congressman Montgomery:

As a military widow, I object to the permanent termination of DIC benefits in the case of a remarriage of the widow after age 55. I can understand fully that a temporary termination be in effect for the years of that remarriage.

I understand the reason for the permanent termination was to save money. However, it is actually causing widows of DIC benefits NOT to remarry; thereby continuing to receive DIC benefits over a period of years that could have saved the government money over an indefinite number of years of a remarriage.

I ask you for fairness and accommodation of correcting the revocation of annuities for DIC widows, in the event of death or divorce of a remarriage (OBRA 1990). DIC widows were never notified of this abrupt devastating change in their lives.

Please vote in favor of H.R. 68 introduced by Congressman Bilirakis on January 5, 1993, to amend title 38, United States Code. May I hear from you in this regard?

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Established 1968

Statement of

Chief Warrant Officer Four John W. Morrison, USA, Retired

Associate Legislative Counsel

The National Association for Uniformed Services

and the

Society of Military Widows

Before the

Subcommittee on Compensation, Pension and Insurance

Committee on Veterans' Affairs

U.S. House of Representatives

September 23, 1993

Medal of Honor-Special Pay / DIC-COLA / Draft Legislation

Mr. Chairman, and members of the subcommittee, I welcome the opportunity to present the views of the National Association for Uniformed Services and the Society of Military Widows. The National Association for Uniformed Services represents all grades and branches of uniformed services personnel, their spouses and survivors. Our nationwide association includes active, retired, reserve and National Guard, disabled and other veterans of the seven uniformed services: Army, Marines, Navy, Air Force, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. Our affiliate, the Society of Military Widows is an active group of women who were married to uniformed services personnel of all grades and branches and represents a broad spectrum of military society. With such membership, we are able to draw information from a broad base for our legislative activities.

H.R. 1796 proposes to increase the rate of the special pension to Medal of Honor winners from $200 to $500 per month. The National Association for Uniformed Services and the Society of Military Widows support this bill. We thank Mr. Floyd Spence, (R-SC) and Mr. Michael McNulty (D-NY) for introducing it and appreciate Chairman Jim Slattery's (D-KS) scheduling it for this hearing.

We hold Medal of Honor winners in the highest regard. Their special pension should be as financially rewarding as that of American professional sports heroes, but we realize in today's environment of budget constraints that this is not feasible. However, there can be few better uses of government funds than to reward military personnel for their extraordinary bravery, gallantry, intrepidity, total disregard for their own lives and self sacrifice above and beyond the call of duty against an enemy of the United States.

H.R. 2341: The National Association for Uniformed Services and the Society of Military Widows support this bill which would, effective 1 December 1993, provide a three percent cost-of-living adjustment in the rates of compensation payable to service connected disabled veterans and recipients of dependency and indemnity compensation (DIC).

This COLA increase, which is the same adjustment expected for Social Security recipients and veterans' pensions, will help to maintain the purchasing power of their benefits and protect the standard of living of these recipients from the ravages of inflation, many of whom are living on the margin. It's truly unfortunate that inflation cannot be prevented, for if it were so, there would be no need for COLAs to protect the purchasing power of government benefits, regardless of whether the entitlement is a Department of Veterans Affairs survivor benefit, disability compensation, pension or a retirement benefit that was earned as part of a compensation package.

REINSTATEMENT TO DIC. We very much appreciate your personal concern and this subcommittee's strong commitment to provide legislative relief for surviving spouses who were barred from reinstatement to DIC rolls by a harsh provision of the Omnibus Budget Reconciliation Act of 1990 (OBRA), which was passed without public hearings or input. OBRA was particularly devastating because of

retroactive provisions which impacted adversely upon the surviving spouses of veterans who died from service connected conditions, especially those widows who had remarried and with their new husbands made insurance and estate plans based upon the government's promise that DIC was reinstateable. Many of these widows are now in their 70s and 80s and because of their husband's age and medical condition they are precluded from purchasing affordable life insurance or making alternate estate plans. OBRA is devastating because these widows believe they have lost control over their lives, their welfare and dignity and now are at the mercy of government budgeteers who have betrayed them.

The widows we represent are grateful that within Congress there are still those who care about them and their welfare. They appreciate what this subcommittee is doing and understand that for the present any legislative remedy that may result will be subject to the availability of funds.

We have considered the three concepts presented by Mr. Slattery. We recommend that the Congress provide for the reinstatement to VA benefits of an unremarried surviving spouse at one half of the normal benefit rate for 1994 and at the full normal benefit rate for 1995 and beyond. The 26 associations that are members of The Military Coalition agree with this position. Anything less for this relatively small and defenseless group of survivors would perpetuate the breach of faith which government budgeteers created when they included retroactive provisions within OBRA.

"VETERANS' APPEALS IMPROVEMENT ACT OF 1993" has been proposed by the Secretary of Veterans Affairs to improve and clarify certain appellate procedures to the Board of Veterans' Appeals (BVA). We appreciate this initiative since one of its primary objectives is to reduce the Board's response time. However, we have some concerns regarding certain sections of this bill because it contains proposals that work against the veteran and do not take into consideration decisions rendered by the Court of Veterans Appeals (CVA). Our comments are in the same order as they appear in the draft.

First, however, we want to go on record as supporting the one-member decision option proposed by this legislation.

SEC 2. COMPOSITION OF THE BOARD OF VETERANS APPEALS. Our concern is with subsection (c)(1) which would allow the Chairman from time to time to designate one or more of the Department employees to serve as acting Board members.

It is not clear to us why there is a need to change the current law which limits one individual as a temporary member of the Board at any one time. It appears that the suggested change could result in the Chairman being criticized for politizing the process of who is selected for temporary duty and the cases which are assigned to that individual for review and decision.

SEC. 3. ASSIGNMENT OF MATTERS BEFORE THE BOARD. We believe the last sentence in this section, which reads *"Any such assignment by the Chairman may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise."*, should be deleted to ensure compliance with existing laws and CVA rulings.

SEC. 4. DETERMINATION BY THE BOARD. Since the BVA is bound by CVA rulings, SEC 4 (a)(3) should include a clear acknowledgement of this fact. Our recommendation follows:

> ...THE BOARD SHALL BE BOUND IN ITS DECISIONS, INCLUDING ALLOWANCES MADE UNDER THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, BY THE REGULATION OF THE DEPARTMENT, THE COURT OF VETERANS APPEALS BODY OF DECISIONS, THE INSTRUCTIONS OF THE SECRETARY...

SEC. 7. MEDICAL OPINIONS. We are greatly concerned about this section. It ignores the CVA mandated requirement to use only independent medical opinions/examinations to determine claimant's medical issues. Veterans are owed the opportunity to be represented by licensed, board certified, practicing medical specialists who are not directly or indirectly beholden to VA. This is especially important since it was an employee of VA whose medical opinion did not support the claim in the first place and is, most likely, the reason for the claim's being appealed.

SEC. 10. EFFECTIVE DATES OF AWARDS BASED ON DIFFERENCE OF OPINION. Our position is that the effective date of the award should be the date the veteran initially filed the claim providing the condition was compensable at that time. No veteran should be financially penalized by an erroneous decision within the VA, regardless of the level which rendered that decision.

Again, we wish to restate that we offer our recommendations in the spirit of producing legislation that better serves veterans.

In closing, Mr. Chairman, NAUS and SMW thank you for providing this opportunity to testify before this distinguished panel.

STATEMENT OF

RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING THE

"VETERANS' ADJUDICATION AND APPEALS IMPROVEMENT

ACT OF 1993" (H.R. 2574)

AND THE

"VETERANS COMPENSATION RATES AMENDMENTS OF 1993" (H.R. 2341)

AND

"VETERANS' BENEFITS, TITLE 38 U.S.C., AMENDMENT" (H.R. 1796)

OCTOBER 13, 1993

Mr. Chairman and Members of the Subcommittee, Paralyzed Veterans of America (PVA) appreciates this opportunity to express our views on the proposed bills cited as the "Veterans' Adjudication and Appeals Improvement Act of 1993" (H.R. 2574) and the "Veterans Compensation Rates Amendments of 1993" (H.R. 2341) and "Veterans' Benefits, Title 38 U.S.C., Amendment" (H.R. 1796), which would increase the rate of special pension payable to persons who have received the Congressional Medal of Honor.

We must first point out that the legislation proposed by the Department of Veterans Affairs does not address the pressing problems of VA's Regional Office adjudication procedures. This is a major area where the need for reform is obvious. Improvement at the Regional Office level will result in increased efficiency at the Board level. PVA has always supported, and continues to support, proposals increasing the efficient operation of VA programs while providing quality, timely services to our veterans and their dependents.

The proposed "Veterans' Appeals Improvement Act" returns to the Chairman of the Board of Veterans' Appeals the limited power to

grant benefits on the basis of a difference of opinion among the Board members. This power, originally exercised by the Chairman, was deemed in excess of his authority by the VA General Counsel. Its return will benefit those claimants whose claims are obviously meritorious, but not obviously erroneous. This power, like any substantive decision of the Board, must be subject to judicial review. PVA opposes any attempt to restrict the Court of Veterans Appeals jurisdiction over any benefit claims.

The proposal to permit the use of state of the art technology in hearings meets with our wholehearted approval. We praise this innovative response toward facilitating the veteran's right to a timely hearing. Under no circumstances, however, should the availability of teleconferencing affect the appellant's right to appear personally before members of the Board in Washington, D.C., or before members of a traveling Board panel. We also believe that the option should remain with the claimant as to whether state of the art technology is to be utilized in the conduct of his or her hearing.

Additional alternatives to travel Board hearings such as hearings before hearing officers can be better publicized. Many claimants are not aware that hearings before hearing officers are transcribed and made available for the Board's consideration in deciding a case. The benefits of these alternative forms of hearings such as time savings, convenience, etc. could cause many claimants to select hearings conducted by hearing officers rather than by Board members.

PVA supports removal of the arbitrary limitation the law places on the number of Board members. There are far better management tools to insure that the appropriate number of Board members are maintained. The deletion of this arbitrary number removes the need to set limitations on the use of temporary Board members. The

limitation on the use of temporary Board members insures that the problems in the past leading to the limitation have been eliminated. The arguments raised by the Secretary justifying the unlimited temporary Board member terms are based to a significant degree on the assumption that the Board will be permitted to use single Board members to decide claims. We would also believe that if a veteran is to wait an extended period of time for a travel board hearing that he is entitled to have his case heard by a duly appointed Board member.

Mr. Chairman, we are committed to the improvement of adjudication procedures and timely processing of claims. We disagree, however, with any proposal that would institute one member BVA "boards" to produce this improvement. The efficiencies of this proposal would dilute quality of decision-making so that poor decisions would require undue revisions at the Court level. BVA has yet to demonstrate to our satisfaction that the purported increase in efficiency is in fact attainable.

We pointed out previously that only 5 percent of the Board's decisions are appealed to the Court. This Committee must understand that for 95 percent of the veterans who are dissatisfied with the VA's initial adjudication of their benefits claim, review by the Board of Veterans' Appeals is their final appeal, and the Board is the ultimate arbiter of their claims. Consequently, it is <u>critical</u> that the Board's review be as full and fair as possible. We believe that a single member Board decision is appropriate if the Board decision orders a remand of the claim to a lower level of the VA for proper action or if the Board allows the benefits sought. However, PVA continues to <u>adamantly oppose</u> any reduction in panel size in cases in which the relief sought by the veteran is denied. We continue to believe that prior to the final denial of benefits, veterans are entitled to retain the due process protections they have enjoyed for more than 60 years -- a thorough and independent review of their claim by three of VA's most knowledgeable persons regarding benefit claims.

The Committee should be aware that PVA's compromise offer would mean, given the most recent Board statistics, that a single member could decide 66 percent of all cases appealed to the Board, leaving only 33 percent of the Board's cases to be decided by three members. This plan would permit the time savings contemplated by a reduction in Board size in the vast majority of the cases, while preserving -- for the veterans who would be adversely affected -- their right to the same complete and thorough review they now enjoy.

Traditionally, the Chairman of the Board of Veterans' Appeals has, in effect, been the "Chief Executive Officer" of the Board. His duties were limited to the formation of Board sections and expanded panels and the resolution of broad policy issues. For the first time in the Board's history, the Chairman would be conferred with the powers of a Board member. This additional power would permit him to issue final decisions. It would place him in a position to decide all cases involving issues coming before the Board. It would open up the prospect of allegations of unfairness in taking away cases from other Board members and deciding them himself/herself.

It is proposed to deny Court review of the Chairman's power to assign cases to Board members. Not even the Court of Veterans Appeals grants its Chief Judge the power to appoint specific judges to a case. Judges at the Court are selected randomly to sit on panels. Yet, the Chairman would be granted the unbridled power to select the specific Board members who will decide motions or decide cases. This proposed grant of power leaves open the door for allegations of favoritism and worse.

The Board has had Deputy Vice Chairman positions for a number of years. There is no reason why persons occupying this essentially management position should be subject to removal at the whim and caprice of the Chairman. These positions should be filled by the dedicated professionals such as those who have previously held

these positions. The positions should continue to be subject to the same procedures now employed for appointment and termination. The Board of Veterans' Appeals has traditionally utilized medical experts within the VA (opinions from specialists selected by the Chief Medical Director) and from other Federal agencies (the Armed Forces Institute of Pathology). The Board has statutory authority to utilize staff medical consultants and has done so for many years. The Court of Veterans Appeals has expressed no objection to the Board's use of its own medical consultants. The safeguards contained in the use of such opinions are now mandated by the Court.

PVA is concerned by the absence of limits on the Board's power to seek medical opinions presently and in the proposed Section 7. Medical opinions should be initiated at the Regional Office level. These opinions are evidence.

Claimants should have the opportunity to have all evidence considered first by the Regional Office. They should have the opportunity to present their views concerning these opinions to the Regional Office as well as the Board. When medical opinions are available to the Regional Office, the likelihood of an equitable decision at the lowest level is enhanced.

The Court of Veterans Appeals does not permit the Board to make decisions based on unsubstantiated medical opinion. The same requirement must be enforced at the Regional Office level. It makes no sense to VA or the claimant to wait until a case is at the Board to initiate this mandatory development when the Regional Office can obtain it and resolve a claim far earlier and at far less expense.

Mr. Chairman, PVA supports H.R. 2341, a bill which would increase the compensation Cost-of-Living-Adjustment (COLA) paid to 2.2 million veterans with service-connected disabilities and 340,000 survivors receiving DIC, effective December 1, 1993. PVA remains unalterably opposed to indexing the veterans' compensation COLA.

We do, however, support the concept of increasing the rates in FY 1994 by a percentage at least equal to the increase in Social Security benefits, and making them all effective on the same date.

PVA previously supported legislation to increase the special pension for recipients of the Medal of Honor. PVA continues to do so. Congressmen Floyd Spence and Michael McNulty, sponsors of H.R. 1796, point out that a significant number of the less than 200 living recipients exist on income below the poverty level.

This pension has not been increased since 1979. These valiant people earned their right to this adjustment as no other Americans have. The proposed legislation is a small recognition of their courage. We can do no less.

Mr. Chairman, in your October 5, 1993, letter to PVA you asked us to comment at this hearing on three concepts pertaining to the reinstatement of VA benefits or a special death gratuity for an unmarried surviving spouse.

The problems of surviving spouses barred from benefit reinstatement due to a disqualifying marriage are shared by PVA. The solution to these problems is not easy. Each time we create an exception to the basic disqualification we raise the specter of equally deserving individuals who do not meet the exception. For this reason, PVA believes strongly that more careful and thoughtful consideration is mandated before we craft further legislation in this area. The proposals advanced by Chairman Slattery present an excellent starting point to the resolution of these shared concerns.

PVA is compelled to point out that the source of funds to pay for these new benefits is not identified. It is unfortunate that in providing for one group of beneficiaries we are forced to choose others who may be denied because of funding constraints. Any new legislative proposals should therefore be accompanied by specific

sources of funding cuts.

Mr. Chairman, that concludes my testimony. I would be glad to answer any questions.

SERVING
WITH
PRIDE

STATEMENT OF

EARNEST E. HOWELL
AMVETS NATIONAL LEGISLATIVE ASSISTANT

before the

SUBCOMMITTEE ON COMPENSATION & PENSION
of the
COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

on
H.R. 2341, H.R. 1796
and
DRAFT LEGISLATION AFFECTING
THE OPERATION OF
THE BOARD OF VETERANS APPEALS

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Wednesday, October 13, 1993
Room 334
Cannon House Office Building

Mr. Chairman, AMVETS is grateful to you and the members of the subcommittee for the opportunity to present our views on two House bills, H.R. 2341 and H.R. 1796, concerning certain entitlements to veterans and their dependents and survivors; on draft legislation from the Secretary of Veterans' Affairs concerning the operation of the Board of Veterans Appeals; and finally on alternatives to reinstate dependency and indemnity compensation (DIC) and death benefits to certain former spouses. I would like first to comment on H.R. 2341 and H.R. 1796.

These two bills represent concepts which AMVETS strongly supports. We are pleased to see that, in spite attempts to reduce the deficit, leaving veterans and their families to be ignored in the name of a balanced budget, the subcommittee continues to promote and defend progressive veterans legislation which allows veterans to counter the effects of an unstable national economy.

Both on a national and individual level, the American dream has been reduced to a game of pinching pennies and stretching dollars; of having to decide on a daily basis what to give up just to get by. Veterans are no strangers to sacrifice, but sacrifices made to defend our country are not the same as sacrifices made to keep a home, a family and a reasonable expectation of doing better than mere survival.

Veterans, especially those with service-connected disabilities, and the spouses and survivors of veterans, need reassurance that Congress and the administration have not forgotten them. AMVETS commends the subcommittee for providing the cost-of-living adjustment (COLA) increase in service-connected disability compensation and DIC contained in H.R. 2341. We reiterate our concern, however, that the link between the consumer price index and VA COLA is unjust, as it fails to account for the extraordinary daily living expenses customarily incurred by disabled veterans.

AMVETS wholeheartedly supports the intent and substance of H.R. 1796. This very legislation was the subject of a resolution adopted by AMVETS at our 49th National Convention in New Orleans, Louisiana, in August of this year [Exhibit 1]. Barring any unforeseen major U.S. military involvement, the number of recipients of the Medal of Honor can only be expected to decrease over time. We feel that the increase, which would amount to slightly more than $700,000 per year, is more than justified and long overdue.

The Veterans' Appeals Improvement Act of 1993, legislation proposed by the Secretary of Veterans' Affairs (VA), addresses a number major issues which AMVETS has for some time recognized as crucial to the quality and timeliness of the VA adjudication process.

For the adjudication process to function properly, decisions on claims must be reached at the lowest possible level, preferably at the RO. When a veteran appeals an RO decision, the next stop is BVA, but not before both the RO and the veteran have the opportunity to reach a reasonable resolution. This can be accomplished with or without a hearing at the RO, and the veteran is encouraged to produce any evidence which might bear positively on the claim. If the veteran does not receive the benefit sought from the RO, the claim is forwarded to BVA.

Once the claim reaches BVA, if it is determined that a decision based on all available evidence of record is not possible, there is but one course of action: the case must be remanded back to the office of original jurisdiction, the RO, for further development.

Upon receipt of the remand, the RO is required to take the necessary action to obtain and include required evidence in the claim folder. The claim is then run through the RO adjudication process again. Both the original evidence and any new evidence obtained on remand is considered. If a favorable decision, based on the new sum total of evidence can be made at the RO, then the benefit is awarded. At this point the appeal would be vacated and the due process conveyer belt would stop.

AMVETS supports the intent of the Secretary's proposal to enable the Chairman and members of BVA to streamline the adjudication process to promote more timely claims resolution. We welcome the use of modern telecommunications technology as a means of making BVA hearings easier to accomplish and more convenient to veterans. We also favor single board member ratings. Further, we must insist that the right to review the actions and decisions of the chairman remain a normal part of the checks and balances system and not preclude COVA in the course of veterans' due process.

AMVETS encourages the subcommittee to maintain a positive approach to improving the quality and efficiency of BVA. In so doing, we urge you to keep in mind the separate and distinct roles of the RO and BVA in the adjudication process. Reducing the number of remands by adding claims development to the BVA mission is not prudent. That part of the claims processing machine is not broken, so there is no need to fix it.

As we have stated several times during this congressional session, what does need fixing is the quality and timeliness of claims development in VA's 58 regional offices. The way to fix this problem is to thoroughly train and retain a corps of highly motivated individuals to get it done right the first time. This, along with modernized automation and team-based case management, would result in a rapid reversal of caseload backlogs, reduce the number of remands from BVA, and bring the average handling time of claims to a much more acceptable level.

Numerous factors and circumstances have contributed to the increase in both the number of claims reaching the Board of Veterans' Appeals (BVA) and the average number of days required to complete the adjudication process. The "double-edged sword" effect of the Court of Veterans' Appeals (COVA) has certainly added to the backlog. While its existence affords veterans an added measure of due process, it likewise increases the body of law BVA must follow in making its determinations. AMVETS expects the "tightening up" during the early years of COVA decisions to pay dividends in the long run.

We consider the move to permit the BVA Chairman or Vice Chairman to administratively allow previously denied claims on the basis of a difference of opinion to be in keeping with the principle of resolving reasonable doubt in favor of the veteran, particularly in cases too close to definitively call one way or the other. Removing the limits on the length of time temporary BVA members serve will allow for consistency and continuity in resolving issues in which the temporary members are involved.

However, AMVETS is deeply concerned that giving the BVA Chairman autonomous power to make decisions and assign cases to members or panels at will without being subject to review appears to suggest a departure from the concept of COVA as the final authority in the

disposition of VA claims. AMVETS does not support this provision, as it would, in some cases, not only eliminate a check and balance of due process, but it would also make possible the perception of biased case assignment and review by the Chairman and the BVA in general.

Periodic COVA review of the BVA Chairman's actions and decisions would afford a considerable measure of trust and confidence in the appeals process and lessen the negative impact of denials of claims on appeal from BVA. Routine review would neither diminish BVA's capacity to carry out its mission, nor would it short circuit due process of claims to reach COVA.

The Secretary's proposal to "clarify the BVA's authority to obtain and employ medical opinions..." would, rather than facilitate BVA's decision process, further complicate it by altering the very mission of BVA. If this change were carried out, BVA would be assume the responsibility for claims development, which is the primary duty of the VA regional office (RO). While this would conceivably cut down on the number of cases remanded to the ROs, it would increase--not decrease--the timeliness of BVA decisions. It is difficult to accept the contention that adding case development to BVA's daily routine would speed up the decision process.

AMVETS feels strongly that any medical opinions rendered by BVA staff physicians may be prejudicial and not in the best interest of veterans. It is important to point out the distinct difference between a medical opinion on review and a medical opinion on examination. It would be unfair to both the medical professional and the veteran concerned to ask for a medical opinion based on medical reports alone. For a physician unfamiliar with a particular veteran, "within normal limits," a description often used by medical examiners, could be extremely difficult to accurately determine without first-hand knowledge. Who is to say that what is "within normal limits" to one doctor might not be to another?

When a more definitive medical opinion is required, the best and fairest assessment can only come through an actual examination of the veteran. In cases where doubt exists, the veteran deserves to be seen. It is the duty of BVA to determine if more medical evidence is needed, and hence, further development of the claim is required. Such further development should come from the RO in response to a remand from BVA, to include scheduling exams, obtaining related medical evidence, association of the evidence with the claim, and subsequent re-adjudication.

It is conceivable that claims development performed at BVA could create internal adjudication loops at the board by side-tracking BVA members from the performance of their assigned mission. But more important, once claims development were to begin at BVA, we would begin to see less and less development being done at the RO level, literally where the veteran lives and where the rubber meets the road as far as adjudication is concerned. This would not improve the efficiency of VA decision-making, reduce the average number of days required to render decisions, or enhance the quality of overall claims service to veterans. To the contrary, claims development at BVA would degrade BVA's performance and at the same time send a message to ROs that any failure to properly develop claims would be accommodated at BVA.

AMVETS is grateful to you, Mr. Chairman, and the subcommittee for carrying forward legislation such as H.R. 2341 and H.R. 1796 as a means of reassuring our veterans and their families that America is still grateful for their service to our nation and forever aware of our

obligation to meet their needs. While the Secretary's proposal contains many positive alternatives, we urge caution in the search for ways to improve the quality and timeliness of VA claims processing. We feel strongly that whatever the changes to be made, the fundamental roles of the RO and BVA must not be altered.

Mr. Chairman, you requested comments regarding alternative means to reinstate certain former spouses' entitlement to VA dependency and indemnity compensation (DIC) and death benefits eliminated by the Omnibus Budget Reconciliation Act (OBRA) of 1990.

The first alternative would reinstate only those whose subsequent marriage was of a short duration. If this alternative were enacted into law, AMVETS would suggest that the law stipulate that these former spouses' reinstatement would be delayed for a period of time equal to the length of the subsequent marriage. Only one such reinstatement should be allowed.

The second alternative would offset DIC benefits against earned personal income and reinstate death pension recipients. AMVETS would consider the offset appropriate with some minimum floor below which the benefit for the former spouse would not be reduced.

The third alternative would reinstate former spouses at a significantly reduced rate. This would be the simplest to implement and administer, and it not would involve the hair-splitting inherent in the other alternatives.

Thank you again for inviting AMVETS to testify today. Mr. Chairman, this concludes my statement.

[EXHIBIT 1]

Resolution 47
Subject: Increase The Medal Of Honor Pension

WHEREAS Public Law 85-56, dated June 17, 1957, established a monthly pension to be paid to recipients of the Medal of Honor; and

WHEREAS statutory amendments over the years gradually increased the monthly pension rate; and

WHEREAS 13 years have now elapsed since the monthly pension was increased to $200 on Jan 1, 1979, and the effects of the inflation have substantially diminished the real value of that amount; and

WHEREAS a number of recipients of our nation's highest combat honor are reported to be on welfare, a circumstance which is to be deplored; now therefore

BE IT RESOLVED that AMVETS supports legislation to increase the monthly pension to $500 for these most deserving citizens in honor of their sacrifice on behalf of the nation and to ensure a financial safety net for those among them in need.

STATEMENT OF PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
OCTOBER 13, 1993

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to comment on legislation to provide increased compensation benefits for service-connected disabled veterans and their survivors, and in the special pension payable to those who have received the Congressional Medal of Honor. Also under consideration this morning will be draft legislation intended to improve and clarify certain VA appellate procedures.

HR 1796 would increase the special pension payable to those individuals who have been awarded the Congressional Medal of Honor from $200 to $500.

The current rate of $200 for this special pension for Medal of Honor recipients went into effect on October 18, 1978, pursuant to PL 95-479. However, beneficiaries under other pension programs have, over the years, received periodic cost-of-living adjustments of more than 200 percent.

The American Legion believes Congress must address the economic needs of this honored group of veterans by ensuring this special benefit is fulfilling its intended purpose of both recognition and support. There are approximately 204 living Medal of Honor recipients. At the 1993 Spring meeting of The American Legion National Executive Committee, a resolution was adopted calling for an increase from $200 to $600 in the special Medal of Honor pension and that this benefit be regularly increased, as determined by Congress.

HR 2341 would provide a 3.0 percent cost-of-living adjustment in the rates of service-connected disability compensation and in the rates of dependency and indemnity

compensation (DIC) established under PL 102-568. These changes would become effective on December 1, 1993.

The American Legion supports the proposed cost-of-living adjustment in compensation benefits for service disabled veterans and the survivors of those who died in service or of service related causes. We have expressed support for similar periodic adjustments in the past as being both necessary and fair in ensuring the economic support provided service disabled veterans and their survivors by VA keeps up with the increased cost of living.

Mr. Chairman, The American Legion is relieved that this proposal does not seek to index the cost-of-living increase in disability compensation to any adjustment in the benefits provided by the Social Security Administration to eligible recipients. We take this opportunity to restate our continuing opposition to the concept of indexing the disability compensation COLA to the SSA COLA. Hearings on such proposed cost-of-living adjustments before House and Senate Veterans Affairs Committees provides an important forum in which issues related to veterans' disability compensation and DIC can be presented for discussion. We believe this valuable opportunity would be lost, if future compensation and DIC COLAs were automatically indexed.

As a case in point, the proposed cost-of-living adjustment does not apply to those surviving spouses receiving DIC benefits under the prior law. The American Legion supported the reform of the DIC program which was enacted last year. Under that legislation, those DIC recipients at higher rates were allowed to remain under the old DIC program and we believe it was the intent of Congress that they should also continue to receive a cost-of-living adjustment.

We have also been asked to comment on draft legislation entitled the "Veterans' Appeals Improvement Act of 1993."

This measure contains a number of proposals relating to the authority and operations of the Board of Veterans Appeals.

The bill proposes an amendment to 38 USC 7101(a) to provide that the Board shall consist of the Chairman appointed by the President, a Vice Chairman designated by the Secretary, a number of Deputy Vice Chairmen designated by the Chairman, and removes the statutory limit on the number of Board members.

As currently prescribed by law, the Board of Veterans Appeals is limited to a Chairman and Vice Chairman and not more than 65 members. These Board members are organized into 21 three-member sections. In recent years, the number of decisions produced by the sections has declined dramatically from about 45,000 in FY 1991 to roughly 27,500 in FY 1993. During the same period, the response time has increased from 139 days to more than 440 days. These trends reflect not only the growing demand on the available resources for personal hearings in both Washington, DC, and at regional offices around the country, but the impact of the decisions of the Court of Veterans Appeals on the claims and appeals process, and a decline in the quality of decisions rendered by the regional offices. By allowing single member decisions, the Board estimates that the output of cases can be increased by approximately 25 percent. The increased productivity is also expected to help reduce the Board's overall response time.

The American Legion has become increasingly concerned in the last several years by the serious decline in the quality and timeliness at both the regional office and Board of Veterans Appeals levels. The situation, in our opinion, is at a crisis stage and something must be done to begin to reverse these trends.

These problems were most recently considered by this Subcommittee at the oversight hearing conducted in April of this year. Following that hearing, at your suggestion Mr.

Chairman, several of the veterans service organizations met to discuss possible solutions to these problems. A consensus was developed on a number of recommendations and a letter discussing these recommendations was submitted to the Subcommittee on May 21, 1993. Among the recommendations was one supporting single Board member decisions.

We recognize the Board of Veterans Appeals is facing a major challenge to its ability to process appeals in a timely manner. The Board, with its limited personnel and ADP resources, is also being forced to adapt to a profoundly changed and changing legal environment which further contributes to the decline in productivity and response time. We believe the proposed change authorizing single member decisions will give the Chairman greater flexibility to use available resources and, if the estimates are correct, the Board's response time should begin to improve.

Our support for this proposal is, however, tempered by our current concern with limited resources being devoted to the Board's quality review or quality assurance program. At present, out of a total of about 179 staff attorneys, only 6 are reviewing decisions for consistency, legal correctness, and content under the general supervision of the Deputy Vice Chairman. In FY 1993, the Board issued some 27,000 decisions. Given the sheer size of the workload, the medical and legal complexity of the decisions being reviewed, the current level of staffing allocated to this function is clearly inadequate. Should single member decisions be authorized, it is imperative the Board have the additional staffing resources necessary to upgrade and improve the quality assurance program to meet the higher production level.

This measure would also revise title 38, USC, 7102 to authorize that the Chairman may determine any matter before the Board, or rule on any motion in connection therewith, or

may assign any such matter or motion to any Board member or a panel of members for determination. Any such decision by the Chairman would not be reviewable by any official of the Department or by any court.

The American Legion recognizes that the Chairman must have the authority to make certain administrative and operational determinations relating to the assignment of matters or motions within the Board. Such authority should extend to reorganizing or restructuring the Board to allow for the more effective use of its personnel and resources. To that extent, we do not object to the proposed change in the statute.

However, this particular proposal appears to go far beyond such limited authority. It would, in effect, empower the Chairman to make certain legal determinations as to the disposition of matters or motions and such decisions would be immune to challenge by the veteran either within the Department or in any court of law. The American Legion is opposed to this kind of broad authority by the Chairman or any Board official. Such a provision protects the Board; not the veterans affected by the Board's action.

The draft bill proposes several amendments to title 38, USC,7103 relating to determinations by the Board.

The first proposed change would authorize the Chairman, Board member, or panel of members to issue an order dismissing any appeal, in whole or in part which fails to allege specific error of fact or law in the determination being appealed. We believe such change would impose an unnecessarily strict legal standard on veterans who are unfamiliar with the technicalities of the law. This provision, if enacted, would make the appellate process more rather than less adversarial. This is not in the best interests of veterans seeking fair and impartial consideration of their appeals.

The second proposed change to section 7103 authorizes the issuance of an order remanding the case to the agency of original jurisdiction for additional development.

In FY 1993, approximately half of the 27,000 decisions of the Board of Veterans Appeals were remands back to the regional office for the development of additional evidence and information, compliance with decisions by the Court of Veterans Appeals, current examinations, due process notification, etc. In 1988, the remand rate was less than 20%. Many of the cases certified to the Board are not, in fact, ready for final appellate consideration. However, they will sit for many months at the Board before being reviewed and a decision prepared sending the case back for necessary development which should have been done in the first place. We, therefore, believe it would be to the advantage of the Board and the appellant if the Board were to establish an expedited remand process to initially screen the cases upon their arrival at the Board for those requiring further development. This expedited processing should also be available to the appellant or the appellant's representative, upon request. This was among the recommendations of the veterans service organizations mentioned earlier in our statement.

The draft bill proposes an amendment to title 38, USC, 7103 to provide that a decision of a Board member or panel of members is final, unless the Chairman orders reconsideration of the case. Reconsideration shall be made by a panel of members other than the one member originally deciding the case. There is provision for expanding the panel of members where necessary.

Among the recommendations of the veterans service organizations previously submitted to the Subcommittee in May of this year was one expressing support for

reconsideration by a panel of three members. In addition, we believe it is essential that a decision by the Chairman denying a request for reconsideration including contentions of clear and unmistakable error should be reviewable by the Court of Veterans Appeals. Such review by the Court should include decisions of the Chairman or panel of members denying that a previous Board decision contained clear and unmistakable error, even though no Notice of Disagreement has been filed as to the claim of clear and unmistakable error. Our position on this issue is set forth in a resolution adopted by The American Legion National Executive Committee at its meeting in May 1993.

The draft bill also amends section 7103 to authorize the Chairman or Vice Chairman, upon recommendation of a Board member or upon his own motion, to administratively allow a previously and otherwise final appeal.

The American Legion believes it may be beneficial to some veterans to give the Chairman and the Vice Chairman the authority to make administrative allowances based on a difference of opinion. Ostensibly, it would allow these officials to look at "close" decisions and reverse a previous denial. However, we believe this Committee should weigh this advantage very carefully against the perception, at least, that such authority can be subject to abuse. A separate and arbitrary procedure which is accessible to some veterans and not others is both unnecessary and unfair. Judicial review is now available to address all decisions of the Board and is the appropriate means by which all veterans may seek redress.

Section 7103 would also be amended to provide that the Board, in its decisions, shall be bound by regulations of the Department, the instructions of the Secretary, and the precedent opinions of the Chief Legal Officer of the Department.

This provision appears to be inconsistent with the purpose and intent of the Veterans Judicial Review Act. The decisions of the court clearly are binding upon the Board and constrain its decisions. The proposal, in our opinion, should be modified to reflect this fact.

A further provision of the draft bill would authorize the Board to request medical opinions from an employee of the Board who is licensed to practice medicine in any State, a similarly licensed employee of the Veterans Health Administration or Federal department or agency, or, in certain instances, from an indepen dent medical expert.

This provision clarifies the Board's current authority to obtain an independent medical opinion contained in title 38, USC, 7109. However, we are concerned by the lack of any statutory requirement concerning the medical qualification beyond licensure of the VA or other government physicians rendering such opinions as independent medical experts. We believe the Board should obtain any such opinion from a board certified physician who is a qualified expert on the condition or medical question at issue. The formal opinion provided should include the physician's resume and curriculum vitae.

The draft bill would amend title 38, USC, 7110 to specify that the Board may use electronic or other means to conduct remote personal hearings in addition to holding hearings at the Board in Washington, DC, and at the regional offices.

We believe the Board should test and evaluate alternative methods of meeting the veteran's desire for a personal hearing in a timely and cost-effective manner.

Mr. Chairman, that concludes our statement.

STATEMENT

OF

THE RETIRED OFFICERS ASSOCIATION

before the

THE HOUSE COMMITTEE ON VETERANS' AFFAIRS

Subcommittee on Compensation,
Pension and Insurance

Presented by

Colonel Christopher J. Giaimo

Deputy Director, Government Relations

The Retired Officers Association (TROA)

October 13, 1993

MISTER CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE

I am Colonel Chris Giaimo, USAF, Retired, Deputy Director of Government Relations for The Retired Officers Association (TROA) which has its national headquarters at 201 North Washington Street, Alexandria, Virginia. Our Association has a membership of more than 388,000 active duty, retired, and reserve officers of the seven uniformed services. Included in our membership are approximately 60,000 auxiliary members who are survivors of former members of our association.

The loss of Dependency and Indemnity Compensation (DIC) reinstatement rights has had a demoralizing and adverse financial effect on countless widows. In the three years since the law was changed resulting in this loss of reinstatement rights, we have received many pleas, phone calls and letters from widows who have been financially devastated by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). They uniformly ask why, after 20 years of being provided this coverage, a law was passed which prohibits DIC reinstatement when a widow's second or subsequent marriage terminates. I know that you, the members of this committee, as well as your colleagues have also been asked the same question. That question, Mr. Chairman, is one of the reasons why we are here today.

We have been asked to comment on three different alternatives to providing partial DIC reinstatement to widows whose remarriages terminate. Before addressing those alternatives, we are compelled to reiterate our strong support for full DIC reinstatement as the only fair and equitable legislative response to the inequities of OBRA '90. The organizations in the Military Coalition, a consortium of the following 24 military and veterans associations, representing 3.5 million members of the seven uniformed services, active, reserve, and retired, share our strongly held view:

- Air Force Association
- Air Force Sergeants Association
- Association of Military Surgeons of the United States
- Association of the United States Army
- Chief Warrant Officer and Warrant Officer Association, United States Coast Guard
- Commissioned Officers Association of the United States Public Health Service, Inc.
- Enlisted Association of the National Guard of the United States
- Fleet Reserve Association
- Jewish War Veterans of the United States of America
- Marine Corps League
- Marine Corps Reserve Officers Association
- Military Chaplains Association of the United States of America
- National Association for Uniformed Services
- National Guard Association of the United States
- National Military Family Association
- Naval Enlisted Reserve Association
- Naval Reserve Association
- Navy League of the United States
- Non Commissioned Officers Association
- Reserve Officers Association
- The Retired Enlisted Association
- The Retired Officers Association
- United States Army Warrant Officers Association
- USCG Chief Petty Officers Association

The widows we are concerned with today are survivors of military members who kept their commitment to their country and lost their lives in doing so. The country, however, has not kept its commitment to the survivors of these deceased veterans. Since 1971, DIC recipients were assured of the resumption of their full DIC benefit if a second or subsequent marriage ended. Abruptly, without public hearings or notice, this benefit was withdrawn, effective 1 November 1990. To aggravate the problem, no attempt was made by the

Department of Veterans Affairs (DVA) to publicize this onerous provision. Most survivors did not become aware of their loss in benefits until their current marriages ended and they applied for DIC reinstatement. In fact, many DIC beneficiaries continued to remarry after 1 November 1990, not knowing they had forever lost their right to have their benefits reinstated should the new marriage end. The DVA's own statistics indicate that only through "word of mouth" is the message slowly getting out. As indicated in the following table, between December, 1990 and June, 1993, 2,020 reinstatement requests have been turned down by the DVA since OBRA '90 was enacted.

Department of Veterans Affairs DIC Reinstatement Requests Turned Down By Month

Month	1990	1991	1992	1993
Jan		271	46	25
Feb		195	48	29
Mar		150	71	31
Apr		120	52	22
May		92	44	31
Jun		90	96	19
Jul		80	28	
Aug		90	29	
Sep		57	41	
Oct		47	24	
Nov		50	24	
Dec	51	33	34	
Total	51	1,275	537	157

As shown by these DVA statistics, in the four months from January, 1991 to April, 1991, 271, 195, 150, and 120 DIC reinstatement requests, respectively, were turned down. During May through August, the denials hovered at 90 per month after which they declined to approximately 50 per month. Throughout the later part of 1992 and the first part of 1993 the number of reinstatement requests has leveled out at about 20 to 40 per month, indicating that although the word is slowly filtering out, there is not universal knowledge of Congress' breach of faith in OBRA '90.

This data is also helpful in estimating the total population affected by OBRA '90. An examination of the data for the first five months following enactment, a period when almost no one was aware of the law change, suggests that between 1,500 to 2,000 widows per year were being denied reinstatement after their marriages terminated.

As The Military Coalition predicted in previous testimony, DIC recipients are having second thoughts about remarrying. If the current trend continues, not only will the savings projected from the repeal of reinstatement rights diminish, but the cost to the DVA may actually increase as more and more DIC spouses forgo remarriage in favor of stable economic security. DVA statistics show in FY 1987 through FY 1991 that 1,423, 1,326, 1,334, 1,353 and 1,284 DIC benefits, respectively, were terminated due to remarriage. However, in FY 1992, after OBRA was enacted, only 869 remarriage terminations took place. In FY 1993, we can expect 945 remarriage terminations based on data from the first three quarters. Thus, on average about 425 remarriages each year are not taking place. Since the average widow's benefit is now $833 per month or $10,000 per year, this represents DIC payments of approximately $4.25 million per year that could be avoided if DIC reinstatement were restored. It's reasonable to assume that this $4 million plus could be viewed as an offset to the predicted cost of reinstatement.

To provide background for this testimony, it is important to understand the characteristics of individuals receiving DIC. As of July, 1993, there were

276,195 individuals receiving DIC payments as surviving spouses. Approximately 99% of these beneficiaries were widows. Using data from September, 1991, on average their age was 67, with almost 110,000 between 55 and 74; of this group, 84% were over 55, and 64% were over 65. As you can see, significant numbers of the impacted group are elderly widows who are essentially beyond their economically productive years.

Earlier this year, TROA requested a data file from the DVA which would provide information on all individuals who had their DIC payments terminated. The file was provided for all terminations which were processed in the first six months of 1993. TROA has extensively analyzed this data and would like to share some of its information with you to help better understand the characteristics of DIC terminated individuals. Of the 5,510 terminations which took place, 4,739 (86.0%) were due to death and 394 (7.2%) were due to remarriage. The remaining 7% of the terminations were for a variety of other reasons.

Of the 394 terminated for remarriage, the following characteristics prevail: 97% are women; 88% have no other dependent family members; over half of the 289 widows of deceased enlisted veterans had husbands in pay grade E-4 or below, 55% of the 84 widows of deceased commissioned officer veterans had husbands in pay grade O-3 or below, and the average year of their veteran spouse's death was 1978. Additionally, we find that on average their veteran husbands died when they were only 41 years of age. At the time their second or subsequent marriage ended, they were, on average, 54 years old, with 51% being over 55, and 33% being over 65. These are the widows who, in the future, could and should be eligible for DIC reinstatement if their new marriages end and the law is changed.

Opponents of reinstatement contend that the remarried widow and her husband should have planned their futures better. We would strongly counter that they did plan responsibly, using DIC as the bedrock of their financial plans, **based on Congressional assurances that DIC would be reinstated**! DIC widows must be able to plan and control their financial futures. It's not reasonable to believe or expect that spouses, remarrying before, and even after 1 November 1990, should have based their future estate plans on the assumption that their Congress was going to break faith with them and take away their DIC reinstatement rights. It is also important at this juncture to consider and compare other federal survivor programs. The Veterans DIC program is the only program that does not reinstate benefits when a subsequent marriage ends. The Civil Service Survivor Benefit Program reinstates benefits if a marriage ends for those under 55, and for those over 55, the survivor benefit continues intact into a subsequent marriage so that the marriage termination has no effect on receipt of benefits. A similar provision applies to employees working under the newer Federal Employees Retirement System, as well as for those covered by the Military Survivor Benefit Plan. The same holds true for Social Security beneficiaries; however, the age change takes place at 60. As you may remember, Social Security laws were changed so couples didn't have to live together without the benefit of marriage just so their earned benefits could continue to provide them with the needed economic resources to support themselves in their retirement years.

Let me now turn to the three alternative DIC reinstatement proposals you asked us to comment on. The first alternative is to provide reinstatement of DIC benefits for an unremarried surviving spouse whose disqualifying marriage was of a short duration such as one or two years. Neither TROA nor The Military Coalition supports this alternative because it does not reflect the commitment and investment that spouses' of longer duration marriages made to their second or subsequent marriages. Let me give you an example. A remarried spouse of a service-connected disabled veteran was forced to quit her job to care for her dying husband. She did so, lost her earnings, and depleted considerable savings over the three plus years he lived prior to his

death on November 17, 1990. Yet another example is of the remarried widow with multiple sclerosis who has been married for five years. She has signed a pre-nuptial agreement which directs that most of the estate go to her husband's children of a previous marriage. She will need DIC to survive if her husband predeceases her. Another factor that mitigates against benefits tied to length of marriage is that many widows of marriages longer than two years are older and thus don't have the employment and earning opportunities that younger widows have.

The second alternative suggested is to provide for the payment of a special death gratuity for unremarried surviving spouses of veterans whose deaths resulted from service-connected disabilities in a monthly amount equal to the new $750 flat rate of DIC, subject to an offset for each dollar of outside income received. It is more realistic to call this a welfare payment because a true death gratuity is not means tested and is paid irrespective of income. TROA and The Military Coalition are strongly opposed to this approach. DIC is a survivor benefit program and should not be subject to income considerations. Other survivor benefit programs such as the federal civilian program, Social Security, and the military Survivor Benefit Plan do not have an offset based on outside income. Thus, they are not subject to a means test and neither should the widows DIC survivor benefit program. Under this provision only the very poor would receive this DIC reinstated benefit. It is noted that $750 per month is $9,000 per year. Since the current federal poverty threshold for an individual is $7,143, this $9,000 is just over the poverty threshold. This proposed "welfare" program, patterned after the non-service connected widows pension, would be an affront to these widows. Why in the world would this country require the survivors of those who are killed or die in the service of their country to be the only ones who must be subjected to an offset, in effect having to meet a needs assessment to receive their benefit?

The third alternative proposed is to provide for the reinstatement of the DIC benefit for unremarried surviving spouses, but at one third or one half of the normal rate. While TROA and The Military Coalition continue to believe that full DIC is the only solution that will undo the breach of faith inherent in OBRA '90, we recognize that fiscal constraints make that result unlikely. Therefore, in the interest of providing some relief, we would support a DIC reinstatement at one half of the flat rate, adjusted by annual increases in the CPI. Anything less denigrates the contributions and sacrifices made by the deceased veteran husbands of these widows.

Additionally, Mr. Chairman, and we have strongly suggested this on previous occasions, the Department of Veterans Affairs should be mandated to notify and inform, in writing, each current DIC spouse recipient, as well as all spouses who had their DIC benefits terminated due to remarriage on or after 1 November 1990, about this new change in the law. The DVA should also be required to develop a spouse notification program through the use of newspapers, magazines, veterans and other association publications that surviving spouses might read, etc., acceptable and approved by Congress, that will reach any and all unremarried surviving spouses who would become eligible for reinstatement under provisions of the new law. We implore you to direct that no stone be left unturned in getting the word out to these people. We have seen the results of not doing so in the past. Let us learn from our mistakes!

As previously stated, we too are concerned about the budget cost of DIC reinstatement. Recall, if you will, our estimate of 1,500 to 2,000 widows each year who are being denied reinstatement. Their DIC reinstatement cost per year at one half of the $773 per month flat rate (as of January 1, 1994) would be between $6.90 million and $9.3 million. This cost would be between $20.7 million and $27.9 million for those denied reinstatement for the three years since OBRA '90. The FY 1994 Budget Report shows that 2,193,100 veterans receive total estimated payments of $10.372 billion. We note that FY 1994

budget estimates are based on an assumption of a 3.0% COLA and that H.R. 2341, introduced by you Mr. Chairman, makes the same assumption. It now appears that a reasonable estimate of the COLA is 2.7%. This decrease of 0.3% in the COLA, when applied against the $10.372 billion paid to veterans, yields a savings of $31.1 million, an amount sufficient to cover the budget increase for the widows denied reinstatement during the three years since OBRA '90. Also recall that additional savings of possibly $4 million per year may start to appear as more widows, knowing their DIC benefit can be reinstated, remarry and are taken off of the DIC beneficiary rolls.

TROA would be pleased to work with your staff to facilitate desirable corrective changes to the current DIC legislation and to provide any of its data that might be helpful to your staff.

At the end of my testimony I have enclosed a copy of an article entitled "They Earned More Than Broken Promises" which appeared in our March, 1993 monthly publication, The Retired Officer Magazine. This article describes the DIC reinstatement issue and presents several case histories of individuals tragically affected by this law change.

It's appropriate to summarize this section of the testimony with a quote from Teddy Roosevelt who said "A man who is good enough to shed his blood for his country is good enough to be given a square deal afterward." Can we do less for the surviving widows of those men who died while in the service of their country?

With respect to H.R. 2341, TROA fully supports the "Veterans Compensation Amendments of 1993." On previous occasions we have testified in support of full COLAs for all veterans and their survivors and do so again today. We do, however, wish to reemphasize in the strongest possible way that full COLAs be provided to all DIC beneficiaries, regardless of when or under which law their benefits arose and not just those under the $750 flat rate system.

Mr. Chairman, let me briefly discuss TROA's position on H.R. 1796, the proposal to increase the amount of the special pension paid to Medal of Honor recipients from $200 to $500. To put it quite simply, Mr. Chairman, when a special pension was first proposed for these special people, it was indeed a fitting gesture on the part of a grateful nation to show our appreciation for the sacrifices the recipients had made on behalf of their country. As time has gone by and inflation has slowly eroded the value of this pension, so too has it appeared to erode that sense of appreciation. It is therefore entirely fitting that the amount awarded in the special pension be increased. To not do so diminishes the true intent behind the pension--not monetary, but honorary. The Retired Officers Association, therefore, wholeheartedly endorses the goals of H.R. 1796 and urges your favorable consideration of it.

Mr. Chairman, I would now like to turn to a consideration of the proposals made by the Secretary of Veterans Affairs to expedite the handling of appeals from denials of benefits within his department. The Retired Officers Association has always viewed the decisions and actions of the DVA objectively. When we have disagreed with their approach or methodology, we have said so, and when we agreed with them we have praised their efforts. This package of proposals by the Secretary falls into the latter category.

It is fairly common knowledge that the number of claims for benefits filed by veterans is on the rise. This is due, in part, to the expansion of permissible illnesses now recognized by the Department as being service-connected and also, to a large degree, to the work product of the Court of Veterans Appeals whose decisions have clarified the handling of heretofore contentious issues.

With this rise in the number of claims has come a concomitant rise in the number of denials and appeals from denial of benefits. Likewise, we have seen a rise in the amount of time it now takes to adjudicate an appeal from

several months to over a year in some cases. While part of this increased adjudication time is directly attributable to the shear weight of numbers, much of it is attributable to the somewhat antiquated approach the Department is forced to employ in the adjudication process. I speak specifically of the legal need for panels of three board members to decide appeals from denial cases. The Secretary's proposed change, which would allow single panel member decisions in these cases, is most welcome. The panel members are all skilled practitioners of veterans' laws or else they would not have been selected to serve on the Board. Furthermore, given the very existence of The Court of Veterans Appeals, to act as a "court of last resort," as it were, the necessary safeguards are in place to permit such a procedure to be implemented with assurances that justice will inevitably prevail.

TROA is also supportive of the proposal which would allow the Chairman of the Board of Veterans Appeals (BVA) to unilaterally resolve and rule on procedural motions and other matters. Indeed, such a procedure is analogous to that employed within the federal court system, a procedure which has worked well for years. We are also supportive of the recommendation that would allow for an increase in the number of BVA panel members. A greater number of panel members coupled with authority for single panel member decisions can only result in quicker response times to appeals and a reduction in the overall backlog of cases.

TROA also commends and supports the recommendation to allow the Chairman or Vice Chairman to *sua sponte,* overturn a previously denied claim based on a difference of opinion. While we are certain that such authority will be used sparingly, there will always be those denial cases which, when viewed from a rigid legal standpoint, cannot be approved, yet, when considered in light of the potential consequences attendant to such a denial, still cry out for equity and reversal.

Mr. Chairman, TROA is particularly pleased to be able to support the proposal calling for the use of telecommunications capability whenever feasible. This "futuristic" approach to case management is unique and makes use of technologies currently extant. A consideration of just the cost and time savings possible through use of such a system makes it a worthwhile enterprise.

We are also supportive of any proposal which would add to the medical knowledge and opinions available to Board members during their deliberations. The Court of Veterans Appeals was justified in expressing its concern that board decisions not be based on the unsubstantiated opinion of the deciding members and in directing that medical evidence be obtained from every source possible. If such medical advice, from a variety of sources, within or without the Department, were to be made available to Board members, it would only inure to the benefit of the appellant and enhance the credibility of the Board's decisions.

Lastly, Mr. Chairman, we agree with and support Secretary Brown's proposal to allow the Chairman to continue in service currently acting Board members. There is nothing more destructive to the credibility of a Board decision than to have an acting member, whose period of service has expired, be removed from a case before a final decision is made. Congress does, indeed, have the authority to monitor the Chairman's use of acting members and that is certainly sufficient.

Mr. Chairman, on behalf of The Retired Officers Association, let me commend Secretary of Veterans Affairs Brown for his far-reaching and thoughtful proposals and to thank you for the opportunity to comment on his and the other bills being considered today. I stand ready to answer any questions you may have.

THEY EARNED MORE THAN BROKEN PROMISES

In 1990, Congress enacted a law that placed many remarried widows of disabled veterans at dire financial risk.

By Col Paul Arcari, USAF-Ret., Director, and Col William Hart, USMC-Ret., Deputy Director, *Government Relations*

For more than two years, widows—many of them destitute—of disabled veterans have written to The Retired Officers Association expressing outrage, disbelief and, in some cases, panic. These women are financial victims of a little publicized 1990 law that abruptly terminated reinstatement of Dependency and Indemnity Compensation (DIC), a form of survivor benefit paid by the Department of Veterans Affairs (VA) to survivors of military members who die of service-connected injuries or illnesses.

While a widow forfeits this compensation if she remarries, she was, until passage of the 1990 law, eligible for reinstatement of DIC if her second or subsequent marriage ended. But Congress terminated the practice of DIC reinstatement with the Omnibus Budget Reconciliation Act (OBRA) of 1990, which became effective November 1, 1990. In doing so, legislators reneged on a 20-year statutory guar-

BROKEN PROMISES

"The service promised our husbands that their families would be taken care of in the event of their deaths, and Congress took it away without even notifying women like myself."

antee of DIC reinstatement and shattered the foundation upon which many widows based their estate plans.

Congress has since put forth measures to address the needs of certain DIC recipients left in the lurch. But the vast majority of an estimated 4,000 affected widows remain ineligible for reinstatement. Moreover, DIC is now the only federal survivor program without reinstatement guarantees.

Jean Mailer of Santa Rosa, California, is one DIC widow facing impoverishment. Mailer's first husband was a major and an 18-year Marine Corps veteran who died on active duty in 1957. In 1973 she remarried, this time to a World War II veteran who was not a military retiree. On October 2, 1990, when her second husband's health was failing, she visited a Veterans Service Office in California where she was assured that she would be eligible for reinstatement of DIC if her current husband died and that the amount of her monthly benefit at that time would be $834 (see current rate chart, p. 40).

Mailer's husband died after emergency heart bypass surgery on November 17, 1990, less than three weeks after OBRA 1990 became effective. She was informed on November 27, 1990, that she was not eligible, as of October 31, 1990, for DIC reinstatement.

"I consider it vital and necessary to have my benefits reinstated under DIC. I am in my 79th year. Care facilities in California, which is my home, are charging $3,500 per month and who knows how much higher that can go!"

Elizabeth Dean of Yorktown, Virginia, is another stranded survivor. She became a DIC widow when her first husband died on active duty in 1968. Her second husband participated in the military Survivor Benefit Plan (SBP), a contributory plan that pays a portion of military retired pay to survivors. But his named beneficiary was his former spouse.

Since Dean was assured when she remarried in 1987 that she could reinstate DIC payments if her husband predeceased her, she entered into a prenuptial agreement that left assets brought into the marriage to their respective children. Then her husband died on February 7, 1991.

"There is a total of 44 years of active duty service between my two husbands," Dean says. "One of the major reasons both men made a lifelong career out of military service was that their families would be taken care of in the event of their deaths. The service promised this to each of them, and Congress took it away without the courtesy of even notifying women like myself who had previously received benefits for a long, long time.

"I am sure that this will sound very callous, but had I known that I could not reinstate my DIC benefits, I would never have been so financially irresponsible as to remarry," continues Dean. "I loved my husband dearly, but I know he would have understood my feelings, and we would have had an opportunity to buy insurance or make other financial arrangements had I been notified of the new laws regarding DIC benefits."

Reinstatement of DIC is critical to the financial well-being of these widows. The reasons for reinstatement are as compelling today as when Congress incorporated the guarantee in the Veterans Disability Compensation Act on August 12, 1970, effective January 1, 1971. According to the 1970 VA report:

Permanent bars to reinstatement of benefits have produced harsh results. For example, hardship results if the remarriage is short-lived and the widow emerges from the subsequent marriage in a worse economic position than before. In many instances, the widow has spent most of her life as the wife of the veteran, as a housewife and mother, and has been unable to engage in any outside employment to establish entitlement to retirement or other old age benefits in her own right. The permanent termination of Veterans Administration benefits upon her remarriage at an advanced age frequently places her in precarious circumstances when death or divorce of a subsequent spouse follows.

Moreover, continued the report, *DIC reinstatement for widows of veterans follows the trend established by similar legislation authorized for widows seeking Social Security benefits or civil service retirement benefits. It represents a logical and equitable extension of the theory on which benefits are provided for widows of veterans.*

Termination of DIC reinstatement by OBRA 1990 was

HOW REMARRIAGE AFFECTS FEDERAL SURVIVOR PROGRAMS

The chart below shows the current federal survivor programs and how the programs are affected by remarriage and by termination of a second or subsequent marriage. The VA's Dependency and Indemnity Compensation (DIC) is the only program that does not reinstate benefits when a subsequent marriage ends.

FEDERAL PROGRAM	EFFECTS OF REMARRIAGE	EFFECTS OF TERMINATION OF REMARRIAGE THROUGH DEATH OR DIVORCE
DIC BENEFITS	■ Terminates benefits permanently unless marriage is voided or annulled.	■ Not reinstated.
CIVIL SERVICE SURVIVOR BENEFITS	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.
FEDERAL EMPLOYEES COMPENSATION ACT	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.
RAILROAD RETIREMENT	■ Remarriage under 60 (50 if disabled) terminates benefits. ■ Remarriage at 60 or over (50 if disabled) has no effect.	■ Benefits reinstated at reduced rate. ■ Not applicable.
SOCIAL SECURITY	■ Remarriage under 60 (50 if disabled) terminates benefits. ■ Remarriage at 60 or over (50 if disabled) has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.
MILITARY SURVIVOR BENEFIT PLAN	■ Remarriage under 55 terminates benefits. ■ Remarriage at 55 or over has no effect on benefits.	■ Benefits reinstated. ■ Not applicable.

a grave injustice to DIC survivors who, like Mailer and Dean, made irreversible financial decisions using entitlement to DIC reinstatement as the baseline for their estate plans. "DIC widows in a second marriage will be, or have been, unfairly penalized and many may be made financially destitute by the change," says Sydney Hickey, associate director for government relations at the National Military Family Association in Alexandria, Virginia.

An opportunity to address the needs of some of these widows arose when retirees who previously declined to participate in the military Survivor Benefit Plan were given another chance during the one-year open enrollment period, which closes March 31, 1993. But the SBP option offered little consolation to widows who lost their spouses before the open enrollment period began or whose spouses were terminally ill and not expected to live long enough to meet the two-year survival period required of new SBP enrollees.

In an act of compassion for DIC widows whose second husbands were ill, Congress modified the SBP law, as part of the 1993 Defense Authorization Act, to eliminate the two-year survival period for those military retirees who are married to DIC widows and who signed up for SBP during the open enrollment period. This action brought relief to some widows; it was too late for Mailer, Dean and others.

Nor did the SBP option help DIC widows who remarried non-military retirees. Not eligible for SBP, these couples must rely on life insurance alternatives. Yet many of their husbands are uninsurable because of terminal illnesses. Others, advanced in years, face prohibitively expensive or unaffordable life insurance premiums. Were it not for their faith in Congress' reinstatement guarantee, these couples would have purchased insurance when they were younger and the rates more affordable.

Alyce B. Shaeffer of Reston, Virginia, is married to a non-military retiree. Her first husband was killed in action in Vietnam in 1968. She remarried about 18 months later. Because of advanced multiple sclerosis she is unable to work or support herself. Her physical limitation requires outside assistance for bathing, cooking, housecleaning and laundry. "Should my husband die before me," she says, "I would be unable to provide for my own welfare."

No one knows exactly how many or, more probably, how

few DIC widows are remarried to retirees who were eligible for a second chance at SBP. Nor is it clear how many remarried DIC widows are even aware that DIC will not be reinstated if their current marriage dissolves.

"The Department of Veterans Affairs has made no attempt to notify much less explain the law barring reinstatement to remarried DIC widows," says Jean Arthurs, director of the National Association of Military Widows in Arlington, Virginia.

In 1992, Congress took a second step to help address the devastating circumstances caused by OBRA 1990. The Dependency and Indemnity Compensation Reform Act of 1992 contained a provision to allow DIC reinstatement if a divorce or other proceeding to dissolve a marriage commenced before November 1, 1990, and if that proceeding resulted in the termination of the marriage. But this does nothing to help the women whose husbands have died since the law was enacted.

Since enactment of OBRA 1990, no issue has reverberated more loudly through the veterans' community than the denial of DIC reinstatement. Arthurs finds it paradoxical that, "with one hand, Congress is reaching out to the impoverished and downtrodden of the world with hundreds of millions of dollars of relief. But with the other, it is forsaking the widows of veterans who made this nation the dominant world force it is today."

Many hundreds of widows, in consultation with their husbands, planned for their futures in good faith and with the assurance of the U.S. government that DIC could be reinstated. To deny this assurance undermines the credibility of this nation's leaders.

"It's ironic," Arthurs says, "that Congress reformed the DIC system in 1992, going to great lengths and considerable expense to create a flat rate DIC system of $750 a month for all beneficiaries [effective January 1, 1993]. But they ignored widows who have lost their entitlement to DIC reinstatement."

The basic reason for terminating DIC reinstatement, of course, was to save money. But the savings anticipated could fall short of expectations because of unanticipated reactions. Some widows who were contemplating remarriage have placed their decisions on hold because of OBRA 1990, and more will follow. Widows who remain on the DIC rolls tend to decrease the savings contemplated by OBRA 1990.

"DIC widows who remarried after the 1970 law was passed came off the Dependency and Indemnity Compensation rolls for the duration of their second marriage and, in many cases, for life. A look at the financial picture in three to five years might well show that terminating reinstatement of DIC has cost more than it has saved because DIC widows are not remarrying," says Hickey. Conversely, if savings do not materialize, the cost of reenacting reinstatement will be less than initially estimated.

"The final outcome will produce very little savings but result in much hurt and damage to DIC widows," says Arthurs. "After all, these widows must survive and this will bring them to welfare if there is no DIC."

Speaking about remarried DIC widows like herself, Mary Lou Hurst of Gig Harbor, Maine, says, "We saved the government nearly a quarter of a million dollars over the 22 years we have been remarried. Surely, the government won't deny us the financial protection our husbands earned by sacrificing their lives, now that we are older and unable to work."

OBRA 1990 made DIC the only federal survivor benefit program for which benefits are not reinstated upon death or divorce of a subsequent spouse. In most cases, survivor benefits continue even when the spouse remarries after 55 or 60 (see chart, p. 39).

Congress was confronted with extraordinary time constraints and budget pressures when the OBRA law steamrolled through the legislative process in 1990. Now that the legislative furor has diminished and the moral and financial implications of that decision have become evident, Congress has taken two steps to mitigate the effects of OBRA 1990: eliminating the SBP two-year survival period for new SBP enrollees who are married to DIC widows (this option expires on March 31, 1993), and reinstating DIC for any widow whose divorce or marriage dissolution proceedings began before OBRA 1990 became effective on November 1, 1990, and whose proceedings have since been finalized.

Congress should now take the critical third step to revise OBRA 1990. Such a provision would modify OBRA 1990 to grandmother, under the 1970 law, all DIC widows who were remarried to a second or subsequent spouse before November 1, 1990. Further, Congress should direct the VA to notify all DIC beneficiaries of the provisions of OBRA 1990 as modified.

Congress has protected the interests of veterans and their families unwaveringly for years. Many veterans died from injuries or illnesses suffered as a result of service to their country. They left widows who based their financial futures on Congress' commitment to reinstate DIC. Surely these deceased veterans deserve more than broken promises to their widows.

PRE-1993 DEPENDENCY AND INDEMNITY BENEFITS

According to a 1992 law reforming DIC, beneficiaries whose spouses die of service-connected illnesses or injuries on or after January 1, 1993, receive a DIC flat rate of $750 a month. The law grandmothered beneficiaries receiving DIC payments before January 1, 1993. Their monthly payments, as shown below, are based on the grade of the military member at the time of death from service-connected illnesses or injuries, or on the new flat rate, whichever is greater.

GRADE	PRE-1993 DIC	GRADE	PRE-1993 DIC
E-1	$634	O-1	$803
E-2	$654	O-2	$829
E-3	$672	O-3	$888
E-4	$714	O-4	$939
E-5	$732	O-5	$1,035
E-6	$749	O-6	$1,168
E-7	$785	O-7	$1,262
E-8	$829	O-8	$1,383
E-9	$866	O-9	$1,483
W-1	$803	O-10	$1,627
W-2	$835		
W-3	$860		
W-4	$911		

STATEMENT OF

VIETNAM VETERANS OF AMERICA

Presented by
Bill Crandell
Legislative Advocate

Before the
House Veterans Affairs Subcommittee on Compensation, Pension and Insurance

on

H.R. 2341
and
H.R. 1796
and
the Proposed Veterans' Appeals Improvements Act of 1993

October 13, 1993

INTRODUCTION

Mr. Chairman and members of the Subcommittee, Vietnam Veterans of America appreciates the opportunity to present its views on three very different proposals. H.R. 2341 is the proposed 3.0 percent cost-of-living adjustment in the rates of service-connected disability compensation and the new rates of dependency and indemnity compensation effective December 1, 1993. H.R. 1796 would increase the special Medal of Honor pension authorized in section 1562 of title 38, United States Code, from $200 to $500. These are relatively straightforward proposals, and we can speak to them in short order. The draft legislation on adjudication of veterans claims proposed by the Secretary of Veterans Affairs will take up most of out time here today. These are important topics, and VVA welcomes this chance to address them.

New COLA and DIC Rates

Vietnam Veterans of America believes that it is unfair to ask disabled veterans and the widows and children of those who fought for this country to take the lead in halting inflation. We support a cost-of-living adjustment (COLA) reflecting the consumer price index (CPI). Under no circumstances should veterans be treated to a cost of living value lower than that accorded to Social Security recipients.

Late last week, Mr. Chairman, we were asked our views on three questions relating to the unremarried spouses of deceased veterans. Let me answer those simply.

1. VVA strongly supports reinstatement of surviving spouses in "unremarried" status at the end of a short disqualifying marriage. We are inclined to be more generous than one or two years, feeling the VA benefits may still remain a significant part of the legacy of the deceased veteran.

2. VVA strongly supports payment of a special death gratuity for unremarried surviving spouses of service-connected deceased veterans for the same reason. We are willing to see that offset on a dollar-per-dollar basis, but we would prefer to have a "deductible" base that the spouse receives in any case.

3. VVA objects to reinstatement at a one-half or one-third rate. Not only is it cheap, it is punitive. The point of disqualifying a surviving spouse upon remarriage is not some notion that he or she is dishonoring the memory of the dead, but that he or she presumably does not need the money any longer.

We also urge this Subcommittee strongly to take another look at the assumptions behind the whole policy of discontinuing survivor's benefits upon remarriage. It is late in this century to still assume that every widowed spouse is a helpless wife whose only income derives from being married. There are both widows and widowers who do not need a dime after the veteran's death, and there are both widows and widowers for whom remarriage is more costly than staying unwed. This might be a good time to base survivor's benefits on need.

The Special Medal of Honor Pension

Vietnam Veterans of America supports H.R. 1796, an inexpensive piece of legislation that is long overdue. It has only one purpose: to raise the special pension that is awarded to recipients of the Medal of Honor from $200 per month to a more realistic $500 per month. That $200 figure has not been increased in 14 years of inflation. Based upon the Consumer Price Index percentage increase from 1978 to 1993, that figure should be $500 now. The gallant veterans who have received the Medal of Honor have taken some of the greatest risks for this country that have ever been taken. Today a fifth of the approximately two hundred surviving Medal of Honor recipients live below the poverty line. That is not right.

The Proposed Veterans' Appeals Improvements Act of 1993

Mr. Chairman, Vietnam Veterans of America applauds the openness that several members of this Subcommittee, particularly yourself and Mr. Bilirakis, have shown in encouraging the veterans service organizations to pool our experience in solving the worsening problem of veterans' adjudications and appeals. You have directly and forthrightly urged us and other veterans service organizations (VSOs) to agree upon recommendations for resolving the adjudication problems in the Veterans Benefits Administration (VBA), and we have taken you at your word. Most of the veterans service organizations met several times and sent this committee a letter last summer detailing 17 suggestions for improving the quality and timeliness of decisions of the Regional Offices (ROs) and the Board of Veterans Appeals (BVA).

We find little evidence of those recommendations in the draft legislation offered by the Secretary of Veterans Affairs. The bill before us seems to ignore half of the testimony presented before this Subcommittee at two hearings this spring, and half of the recommendations the veterans service organizations shared with this subcommittee both by letter and in written testimony submitted last July.

Simply put, the BVA case backlog problem has two aspects: one is the staggering and growing load of unresolved cases being shuffled back and forth between BVA and the ROs, and the second is that the quality of the work at the ROs is inadequate. The latter is the source of the former. Stop denying valid claims, and the case backlog will stop growing. That was the central thrust of the VSO recommendations.

DVA's focus seems never to have shifted from the notion that the real problem is simply the volume of paperwork occupying BVA's time, manifested in delays of over three years in resolving cases. Thus the draft bill before this Subcommittee aims at finding shortcuts through the paperwork that will allow

BVA to clear its desks of a logjam of appealed cases. VVA is quite willing to address this bill on its merits, but we cannot do so without cautioning you that something is still needed to address the ongoing problem of the Regional Offices.

An Improved Bill

The draft before us today is a significantly better bill than the one we reviewed last summer. The most blatant assaults on judicial review are gone, as are the least well thought out gimmicks. The proposal for single member panels is workable, as is the idea of electronic hearings. We are getting close to a bill that can fly.

Nonetheless, there *are* some problems. Section 4 (1) [page 5], authorizes the Chairman to "Issue an order dismissing any appeal, in whole or in part, which fails to allege specific error of fact or law." This provision is unnecessarily adversarial, and would penalize many unsophisticated veterans who either do not have a lawyer or are barred by law from hiring one before there is a final BVA decision. If this provision were enacted, many such veterans would have their appeals dismissed without reference to the facts of the case.

The second sentence in Section 4 (a) (3) [page 6] leaves out both the statute and court rulings as sources of binding authority for decisions of the Board. The statute and decisions of COVA, the U.S. Court of Appeals for the Federal Circuit, and the Supreme Court are binding on the BVA. Their omission makes no sense.

The "presented on the record" language of Section 4 (2)(3)(A) [p. 6] also troubles us. Current case law requires the BVA to consider issues not expressly raised. This is beneficial to unsophisticated veterans. The "presented on the record" language, however, might halt this practice. The provision should be amended to read "contained in the record or arising from the record."

One important basis for reopening a case is left out of Section 4 (b) [page 7]: There must be room for review of prior decisions for clear and unmistakable error. Otherwise it will be possible for an ancient error to chop years or even

decades of benefits off the veteran's rightful claim. Let the bias fall to the veteran.

Section 7110 [pp. 11-12] on hearings is generally a good step. However, in (d), we would like language making it clear that the veteran has the right to have the hearing at the Regional Office, unless he or she has accepted a hearing employing electronic means. If it is required that hearings at the RO "be scheduled for hearing in the order in which the requests for hearing in that area are received," exception must be made for terminally ill veterans.

Too Much Power for the Chairman

We understand -- and generally support -- the notion of empowering the Chairman to cut through the muck and resolve cases. However, in two places, the Veterans Appeals Improvement Act of 1993 goes too far in that direction, jeopardizing the rights of the veteran.

Section 3 [page 4] gives the Chairman far too much authority, and specifically exempts it from anybody's review, whether it be the Secretary of Veterans Affairs, the President of the United States or the Supreme Court -- or COVA. The sentence exempting "any such assignment by the Chairman" from review must be deleted, as must the words "may determine any matter before the Board, or rule on any motion in connection therewith, or" in the previous sentence. Such deletions would still permit single member panels, but not arbitrary and capricious dismissals and determinations of cases.

Another serious problem appears in Section 4 (c) and (d) [pp.7-8]. Although administrative allowances can work in favor of a veteran whose claim has been denied by an overly narrow interpretation of the facts, the policy has proved so open to abuse and corruption in the past that it ought not to be reinstated. VVA has consistently asked for veterans to receive the opportunity to make their cases fairly. If they can do that, they ought to win. If they cannot do that, they ought to lose.

The Use of Non-VA Doctors

Section 7109 [pp. 9-10] allows a Board member or panel of members to request an opinion from Board or VA employees, or "an employee of any Federal department or agency who is licensed to practice medicine in any State and who has been designated, in accordance with arrangements made by the Secretary with the head of any such Federal department or agency, to provide such an opinion." This language allows the VA to use testimony from an epidemiologist employed by the Consumer Product Safety Commission to defeat a PTSD claim. It is useful to codify in legislation recent court rulings calling for opinions from outside the Board -- as this section does -- but veterans advocates need to know that such opinions come from doctors qualified on the issues they are discussing.

What this section needs is the addition of a workable and uniform format that would assure that *any* doctor whose testimony or written statement is used in adjudicating a claim is the right doctor -- one with the expertise and credentials to properly evaluate the matter under discussion. The Board should be required to list the medical issues upon which evidence will be accepted; list the qualifications of any doctor(s) to assess those issues; list the evidence presented; and conclude with a statement of the reasons and basis for the determination made.

What Works in the Veterans Appeals Improvement Act of 1993

The bill incorporates two of the measures recommended unanimously by the veterans service organizations, and we are glad to see them. The most important is the authority to allow single-member decisions. However, the VSO recommendation that appeals from single-member decisions be made to three-member panels that do not include the member whose decision is under appeal was not incorporated into the bill, and was an important feature. The authority to conduct hearings through electronic means was also a recommendation of ours

that we are pleased to see here.

Because this draft bill deals exclusively with problems at the BVA level, this seems to be the place to mention two other remedies for the BVA that are offered in Mr. Evans' H.R. 3240, even though they are more managerial than administrative. H.R. 3240 would eliminate terms of appointment for members of the Board of Veterans Appeals, giving Board members a greater degree of independence than they have under current law, and would set their compensation and benefits at levels comparable to administrative law judges, which would recognize their value and slow down their exodus from the system.

VVA supports the Evans bill vigorously. It is important to recognize that not all of the solutions at the BVA can come from shortcuts in adjudication. These two steps are sound management, and we applaud them.

What is Missing from the Proposed Veterans' Appeals Improvements Act of 1993

The draft bill before us aims at clearing up paperwork rather than solving the problem of why so many claims are denied, appealed, remanded, redenied and reappealed. There is almost no reference in the draft bill to the Regional Offices where the problem originates, and where it must be solved if we are to avoid burying thousands of legitimate claims from veterans who deserve benefits, and if we do not want to come up with a similar paperwork-clearing bill every two or three years.

Mr. Chairman, when you asked the veterans service organizations where the problem was and what to do about it, we all agreed that the problem was at the Regional Offices and we agreed upon 17 recommendations, most of which dealt with the ROs. You asked us because the veterans service organizations represent veterans in every stage of their claims. We have a hands-on understanding of where the system works and where it fails -- and why. We take on a great number of these cases after the veteran has already been turned down,

because filing for veterans benefits is generally too difficult for a deserving veteran to accomplish alone, just as an individual accused of a crime is well-advised to retain a lawyer.

Currently, RO adjudicators are going through generational change. The seasoned few are burning out and either quitting or retiring. Far too many of the rest lack adequate training, and they cannot hope that the senior ones will be given time to train them before they go -- unless there is enough additional staffing to allow adjudicators to be taken off the line for training beyond what they learn in the academy in Baltimore, because the most important learning is these jobs is done after the adjudicator starts the job. The alternative is disaster.

The VSOs agreed vehemently that RO and BVA work standards are rooted in unreality, rewarding "case churning" rather than promoting competent claims development. Time requirements reward quick-and-dirty denials, and punish thorough casework. The VSOs called for a revision of work measurement standards to give credit only for a "final" decision in both appealed and non-appealed cases, with no work credit taken until the appellate period has expired. This will give adjudicators an interest in correct decisions, which will reduce the backlog. The 53 percent remand rate speaks eloquently to this contention.

The VSOs called for a case management system at the RO level to ensure proper development of claims and to avoid unneeded BVA remands. The VSOs recommended (1) the use of triage processing of claims with initial analysis by senior adjudicators to develop all the issues and to direct case development, and (2) a team approach to organize adjudication and rating board functions. This will use experienced staff to supervise inexperienced staff, and should sharply decrease the remand rate through effective case development and adjudication. By focusing on BVA, the Veterans Appeals Improvement Act of 1993 does not address these recommendations for improving management of the ROs.

Veterans service organizations made the simple suggestion that powers of attorney granted to VSOs be included in veterans' C-files and entered immediately into TARGET. Failure to do this causes needless delays and paperwork, contributing significantly to the backlog of unresolved cases.

We reported that there is a need for higher quality in both VA communications and VA rating examinations. Veterans receive messages in muddled jargon which they cannot understand, and are given inadequate examinations that need to be done again -- and the result is more delays, more denials, more paperwork. An example is when VA doctors are asked to examine a veteran regarding a secondary condition, to determine whether it was caused by a service-connected disability.

Two very important recommendations for managing the caseload were to authorize single person rating decisions at ROs as part of the team concept, and to authorize the Secretary of Veterans Affairs to waive the overtime salary cap for VA personnel involved in reducing the claims backlog, just as the overtime salary cap may be waived for nursing personnel.

We also suggested authority for an expedited remand system at BVA when requested by the appellant or appellant's representative. This would allow the veteran to pull an incompletely developed case and have it sent back to the RO as early as possible, rather than requiring it to go through the whole process and be formally remanded. We asked that VA be encouraged to accept medical reports from private physicians to speed the process and take the strain from VA.

It is worth noting that a number of these features appear in the administrative experiment being conducted now by DVA in New York City. None of these administrative measures appear in the Veterans Apeals Act of 1993, and they ought to.

Our Hopes for a Companion Bill

The bill before us today is half the bill that the members of this Subcommittee asked the veterans group to help craft. While this legislation will, if amended as we suggest, help clear up the backlog at the BVA, it will not solve the problems at the Regional offices. For that, we will need a second bill as a companion to the Veterans Appeals Improvement Act of 1993 as written.

The framework of such a bill is available to the Subcommittee in the testimony that the VSOs sent for the July 14 hearing, and in the letter that Philip R. Wilkerson of the American Legion sent to you on May 21, Mr. Chairman. The letter summarizes the agreement of the VSOs on what needs to be done to improve adjudication and appeals within the ROs and the BVA. These documents present a clear idea of how to write the second bill -- one that will both work and gain the support of veterans.

VVA understands that Mr. Evans of this Committee will introduce a bill this week that draws heavily on the recommendations from the VSOs, aimed at making the Regional Offices work the way they are supposed to work. Our understanding is that the Evans bill will propose sensible work rules -- perhaps the single most important step in making the ROs succeed -- along with other measures that are sorely needed. We look forward to seeing this bill, and we expect to support it eagerly.

Mandating a Study of the Regional Offices

The bill that we considered last summer had the germ of an important idea when it required the Secretary of Veterans Affairs to establish a plan for reorganization of adjudications divisions. We commented at the time, though, that the reorganization plan called for addressed the wrong problem. It called for a mandated plan "to provide for the reorganization of the adjudications divisions located within the regional offices of the Veterans Benefits Administration to a number of such divisions that would result in greater efficiency in the processing of claims...." Consolidating these divisions may or may not have been a good idea, but the overwhelming weight of the testimony before this Subcommittee last April and May was that the problems with the Regional Offices was managerial rather than numerical.

Because the bill before us today addresses only the problem of clearing up the backlog of appeals at BVA, its most significant failing is in ignoring the greater

problem of mishandled cases at RO level. We need legislation to mandate a study that will produce a management plan for the Veterans Benefits Administration, with particular emphasis on straightening out the mismanagement of the Regional Offices. The current GAO study initiated by Senator Rockefeller does not take this tack, though we expect useful information from it.

DVA does not know what would constitute effective handling of claims, and it therefore has no idea how to measure work effectiveness. It pleads for more staff, but it has no idea what staff it needs, nor where it needs them. A Congressionally-mandated study must require VA to evaluate what would be an appropriate length of time for the development of two different kinds of cases: those that establish service-relatedness, and those that apply for increased ratings. Such an evaluation needs to respect the amount of time proper case development takes, rather than set minimums based on case load. The legislation should require implementation of such a management plan unless Congress disagrees with it within 90 days.

Most importantly, this study must <u>not</u> be the job of the Secretary of Veterans Affairs, any more than it should be left to the Blue Ribbon Panel on Claims Processing, which the acting Under Secretary for Benefits is now conducting. Congress must assign this task to one of the best management consulting firms in the country, one <u>outside</u> the Department of Veterans Affairs. Such a study must draw on the expertise of veterans service representatives, state and county offices of veterans affairs, and lawyers and other professionals well versed in veterans advocacy. It must be done with clean hands and be done very competently, and Congress must oversee the task. Anything less will be a whitewash, whether that is intended or not.

Mr. Chairman, thanks to the openness and sincerity you and the members of this Subcommittee have shown in seeking a solution to the morass of unresolved claims at VBA, we are close to an answer. We look forward to solving this problem with you. This concludes our testimony.

STATEMENT OF RICHARD B. FRANK,
PRESIDENT BOARD OF VETERANS' APPEALS
PROFESSIONAL ASSOCIATION, INC.
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE, COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
OCTOBER 13, 1993

Mr. Chairman and members of the Subcommittee, on behalf of the Board of Veterans' Appeals Professional Association, I wish to thank the Subcommittee for this opportunity to appear. This is the first occasion for the Professional Association to provide testimony before this Subcommittee and prior to addressing the topics before us today, I would like to thank the Subcommittee for the thoughtful attention it has extended over the years to the Board and its operations.

We will confine our remarks to the proposals now before the Subcommittee on single member decision authority for Board Members, terms of appointment and the status and compensation of Board Members. In the past, the Board maintained the goal of entering a decision within 150 days of date on which a case was received at the Board. We call the measure of this interval timeliness. Today, this period is over one year and climbing rapidly. Mr. Chairman, we believe that tremendous credit is due to you, Representatives Evans and Bilirakis and the members of this Subcommittee for recognizing that we are now in what can fairly be called a timeliness crisis in the appellate process. We believe that it is critical to address this issue now, for with literally every day that passes this crisis becomes more severe and the costs of a cure increase. At the same time, we must emphasize that as Administrative Judges, Board Members are obligated to impartially apply the law to the facts as we find them. We believe that our role as judges makes it improper for us to draft or comment on legislation that goes to the substantive rights of veterans. We are confident that the National Service Organizations can act as spokesmen for veterans on such proposals.

We do believe we may properly comment on legislation that goes directly to the duties and responsibilities of Board

Members. In this context, the legislation introduced by Representative Evans and the Administration draft legislation contain provisions that will have a profound impact on the duties and responsibilities of Board Members and the timeliness of decisions at the Board. The proposal to empower individual Board Members to enter final decisions is a radical change from the panel decision format in which the Board has acted since its inception sixty years ago. Given the timeliness crisis, however, and the fact that we now have the United States Court of Veterans Appeals, we fully support the shift to single member decision making. At the same time, we caution that this measure alone will not cure the timeliness crisis, and its impact on productivity may well be overwhelmed by the requirement that the Board prepare in each and every decision on the merits a Certified List of the evidence considered, as well as the ever increasing demands of the travel board docket.

We believe that in crafting any remedies to the timeliness crisis consideration must be accorded not only to the current environment, but also to those factors which will have a material future impact. As we noted above, we believe these factors include the preparation of a Certified List of evidence considered in each and every decision on the merits, and our ever expanding travel board docket. But there is one other critical factor that we wish to place before this Subcommittee. At this time, 40 out of 48, or 83 percent of the current attorney members of the Board are now in the process of leaving to become Administrative Law Judges (ALJs), and their departure will cause irreparable damage to the claims adjudication process and severely aggravate the timeliness crisis. Without a high level of experience among Board Members, literally thousands of claimants will not receive every benefit due. Without a high level of experience among Board Members, every appellant bringing a claim to the Board will be directly affected because inexperienced Board Members will not be able to operate with the high productivity required to maintain timeliness. We believe that the loss of large numbers of experienced Board Members will more than offset any productivity gains through automation, single member decisional authority or administrative reforms. At least a quarter of the veterans' population is 65 or over. Thus, where claims for veterans' benefits are involved, the phrase "justice delayed is justice denied" has a special sting, for the grim reality is that ever more protracted delays in claims adjudication mean that many claimants will literally die before they receive an answer to their appeal.

There are two basic reasons why Board Members are preparing to leave to become ALJs: the ill considered legacy of the Veterans Judicial Review Act of 1988 (VJRA) which placed Board Members on terms of appointment and the Pay Act of 1990, that severed the decades old status and compensation equity between Board Members and ALJs. I will address each of these in turn, and then discuss their impact on Board Member retention.

TERMS OF APPOINTMENT

Under the VJRA, members of the Board for the first time were placed on terms of appointment. As a result of this legislation, Board members are now the only Federal workers under the General Schedule who have had their civil service career positions converted to terms of appointment. The VJRA established a standard nine-year term and provides that a member may be reappointed; however, the enabling legislation mandated that the initial set of 66 appointments would be divided into three groups with inaugural terms of respectively three, six and nine years. The initial set of appointments were made effective in July 1991. Thus, after allowing for attrition from retirements and resignations, approximately one-third of the Board will reach the end of their inaugural terms in July 1994, July 1997 and July 2000.

The VJRA dictates that members of the Board will be appointed by the Secretary with approval of the President, based upon recommendations of the Chairman. 38 U.S.C. Section 7101(b)(2). The language of the VJRA *does not provide*:

> ANY standard or criteria for appointment or reappointment
>
> ANY requirement for an opportunity for hearing or presentation to the Chairman or Secretary for a member seeking reappointment
>
> ANY requirement that a member be provided notice prior to the end of a term that he or she will not be reappointed

Moreover, the statutory language does not contemplate that any other official may act for those expressly identified as participating in the appointment process. Accordingly,

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Moreover, the statutory language does not contemplate that any other official may act for those expressly identified as participating in the appointment process. Accordingly,

under the current statutory scheme, if for any reason whatsoever proximate to July 1994, July 1997 or July 2000, there is no incumbent Secretary or Chairman, approximately one-third of the members of the Board will be automatically dismissed, regardless of their performance, and with devastating effect on the Board's ability to conduct hearings and issue timely and correct dispositions on pending appeals. While the Association in no way wishes to become embroiled in partisanship, we must note the simple facts that the round of appointments in July 1997 will follow a presidential election in November 1996 and the end of the term of the current incumbent Chairman in early March 1997. Should there be a change of Administration, or internal change within an Administration, and if any misadventure then transpires during the first few months of 1997 in the process of the nomination and Senate confirmation of the Secretary or the Chairman, or in the subsequent process of recommendation and appointment of members of the Board, there would be a very grave danger that nearly one-third of the Board would be dismissed--not for cause, but as a result of an unintended effect of the VJRA.

The imposition of terms of appointment on these previously career appointments has profoundly negative ramifications for appellants as well as the Board. For sixty years, the reality and perception has been that members of the Board have decided cases by applying the law to the facts found, regardless of any other considerations. The creation of what is effectively a term at whim opens the adjudication process to politicization and manipulation. While any single Administration may find satisfaction in the belief in, or the reality of, its ability to tug the substantive outcome of appeals in any direction, once this process starts it will be hard, if not impossible, to check. Tides that rise, also fall. When individual merits no longer control the outcome of appeals, we will have a lottery, not an adjudication process and veterans and their dependents will lose both justice and faith.

Terms of appointment, per se, will not preclude the recruitment of individuals to become members of the Board, but they already have and will continue to drain the pool of candidates of precisely those individuals best qualified to serve. Stated plainly, the fact is that no one without recent extensive experience in adjudicating claims for veterans' benefits can function with competence and with the requisite degree of dispatch as a member of the Board. The

law governing veterans' benefits has always been complex and arcane. The advent of judicial review has had an exponential impact on the recondite nature of the field. The Board has recruited almost entirely from within because we believe that no written test, set of paper credentials or interview skills will guarantee the high level of performance we demand to keep the appellate system operating with our immense case load. We believe it takes from seven to ten years for an individual to master the law and the medicine central to the veterans' benefit program. Then only those who have competitively demonstrated their ability by actual performance on the job are selected for membership on the Board.

The organization of the Board around a small cadre of very highly skilled subject matter experts has been demonstrably cost effective. It is a system, however, dependent upon stability and the ability of the Board to retain high quality counsel to train and ultimately promote. The prospect now is that a counsel will work very hard for seven to ten or more years before qualifying for an appointment. That appointment, however, is no longer a career position, but a term with no guarantee that merely doing the job well will secure reappointment. This leaves a counsel facing the prospect that in typically the seventeenth to twentieth year of a career in the Federal government, at a time en there may well be a family to consider, he or she will be cast out without notice. This scenario has already exacted its toll. There are now at least seven counsel, most of them senior counsel, who were acknowledged by Board Members as likely candidates for the Board who have left the Board for other Federal agencies. In each case, a major, if not the sole reason for their departure has been the term issue.

There is no defense on the merits of the current statutory scheme of terms of appointment of members of the Board. The elimination of terms at whim is simply achieved by striking the last sentence of 38 U.S.C. Section 7101(b)(2)(A). This action has no budgetary impact.

STATUS AND PAY COMPARABILITY

The second major reason why Board Members are preparing to depart in large numbers to become ALJs is because they had their responsibilities and the complexity of their work substantially increased by the VJRA, and then they lost the equality of status and pay with ALJs they had enjoyed under

the Pay Act. For a great many years, Board Members were compensated equally as GS-15s with the very great majority of ALJs, including all of the over 800 who adjudicated claims for Social Security Benefits. The Federal Employees Pay Comparability Act of 1990 (Pay Act) dramatically changed this situation by placing ALJs on a separate compensation scale. Speaking in simple terms, the Pay Act alters the compensation of ALJs to such an extent that they will be receiving at least $20,000 per year more than a member of the Board. This differential will only increase with cost of living adjustments, not to mention the equally dramatic differences in retirement and insurance benefits. We must emphasize that the Pay Act in no way changed the duties or responsibilities of ALJs; it only changed the compensation deemed worthy of that work.

Last year, a bill to restore status and pay comparability was considered by the Senate Veterans Affairs Committee. The bill was opposed by Secretary Derwinski. The primary reason offered for opposition was that Board Members did not have the same individual accountability or responsibilities as ALJs. No explanation was proffered as to why for decades ALJs and Board Members had been compensated the same before the Pay Act, but it was put forth that the fact that Board Members decide cases by majority vote of panels made them less individually accountable than ALJs. We must point out that Board Members, unlike ALJs, enter final Department determinations, and in the judicial arena, panels are always the hallmark of greater responsibility. Moreover, as we move to single member decisions this reason vanishes.

The other major reasons offered consisted of selective statistics. For example, the raw percentage of decisions entered by Social Security ALJs after a hearing was compared to such figures for the Board. It was not mentioned that of the other five groups of ALJs and Administrative Judges studied, Board Members conducted more hearings than any group except Social Security ALJs. We do concede that we currently have a lower percentage of appeals where the appellant is represented by an attorney, but this only reflects the lingering legacy of the effective bar on attorney representation eliminated by the VJRA. This situation is already changing, and will change even more dramatically since the recent legislation applying the Equal Access to Justice Act to claims for veterans' benefits.

Pay comparability between Board Members and ALJs is a matter of equal pay for equal work and simply involves a

restoration and reaffirmation of the equality between the adjudication of claims for veterans' benefits and claims for other government benefits usually earned under far less arduous circumstances. The failure to restore pay comparability carries with it the message that veterans and their dependents should be satisfied with second class adjudication.

BOARD MEMBER RETENTION

If Board Members apply to become ALJs, they will be placed on the list maintained by the Office of Personnel Management (OPM) and they will be offered positions. The historical record on these points is clear. Between 1980 and 1990, nine Board Members applied to become ALJs. Everyone of them was placed on the list maintained by OPM and eight of them were offered and accepted positions. The only Board Member not offered a position had severely restricted her geographical availability. During this period, Board Members enjoyed pay comparability with ALJs, and the Social Security Administration was forming new classes of ALJs on a fairly regular basis.

Since the Pay Act of 1990, the OPM list for ALJs has been closed and extremely few new ALJs have been hired. Six Board Members had applied to get on the list prior to its closure and the effective hiring freeze. Every one of them was placed on the list. In July, the Social Security Administration formed its first class of 21 new ALJs from the current list. Out of a pool of over 400 names, two of the six Board Members on the list were selected. These two Board Members between them had over forty years of experience at the Board; both were veterans; one was rated as 70 percent disabled due to combat incurred wounds. As of today, 40 of the 48 current attorney Board Members are on, or applying to get on, the new list. In fact, ten Board members have completed the entire arduous application process and now await placement on the new list.

With respect to future hiring of ALJs by the Social Security Administration (SSA), we have been informed by our former colleagues who are currently ALJs that SSA intends to hire as many as 100 new ALJs from the October 1993 register to be established by the Office of Personnel Management. Also our sources within the office of the Associate Commissioner for Hearings and Appeals of SSA have confirmed the plans for a rather substantial class of new ALJs in the immediate

future. These hiring plans certainly jibe with the Adminstration's announced intentions to reduce administrative backlogs at SSA. It is also pertinent that in 1994, the terms of the eight medical members of the Board will end, and the Chairman has indicated that he intends to replace them with attorneys. By statutory limitation, there are 63 Board Member positions, not counting the Vice Chairman and the Deputy Vice Chairman. There are currently three attorney vacancies on the Board and eight prospective attorney positions to be filled in July 1994, regardless of any other event. This is seventeen percent of the Board Member positions that are guaranteed to turn over within twelve months. With the formation of new classes of ALJs next year, experienced Board Members will be leaving in numbers that will be impossible to replace. Moreover, in a December 1992 letter, the Chief Judge of the Social Security Administration Office of Hearings and Appeals stated to serving ALJs that the selection of women, minorities and disabled persons would be a priority in the future. If these priorities apply among Board Member applicants, we will suffer tremendous losses in diversity and among disabled veterans. Under the best of current circumstances, the Board will barely have the ability to replace the eleven vacancies that will occur within the next year. Any further erosion in our cadre of experienced Board Members can not be made good.

In conclusion, we respectfully request that the Committee accord both prompt and favorable consideration to Mr. Evans' legislation to avoid the disastrous consequences of the wholesale departure of Board Members to become ALJs.

STATEMENT

BY

CHIEF MASTER SERGEANT BOB MILLER, USAF (RET)

LEGISLATIVE AFFAIRS MANAGER

AIR FORCE SERGEANTS ASSOCIATION

BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION

AND INSURANCE

OF THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING

COLA, DIC PROGRAM AND THE

BOARD OF VETERANS APPEALS

OCTOBER 13, 1993

Air Force Sergeants Association
International Headquarters, Post Office Box 50, Temple Hills, MD 20757

Mister Chairman and distinguished committee members, on behalf of the Air Force Sergeants Association (AFSA), I thank you for the opportunity to present our views. The legislative objectives being addressed today by your committee are of special interest and concern to AFSA's 167,000 members. I will discuss AFSA's views and recommendations for each subject separately.

H.R. 2341

Mr. Chairman, your legislation to upwardly adjust VA compensation and DIC rates effective December 1 continues the traditional practice of Congress to have such a "must pass" bill each year. We greatly appreciate your continued strong support of our disabled veterans and their widows. However, we do see the need for a correction to the bill that includes an upward adjustment to the special monthly benefit authorized per Section 1114 (k), Title 38, USC, for certain veterans who experience a service-connected loss of the use of an extremity or other body organ/function. Additionally, AFSA strongly urges that a full COLA adjustment be provided to all DIC recipients, regardless of when they became eligible for such benefits or under which rate system they are placed.

DIC Reinstatement

Mr. Chairman, AFSA strongly agrees with you that OBRA 1990 imposed an injustice upon surviving spouses of military veterans. At a minimum, DIC must be fully reinstated upon termination of remarriage. Of all federal survivor programs, only military widows are barred from reinstatement of benefits when a subsequent marriage ends due to death or divorce. To make the situation even more inequitable, all other federal survivor programs are not terminated at all if the remarriage occurs after age 55 or 60. There seems to be no record of justification leading to military widows being discriminated against so heavily. AFSA strongly recommends that provisions be enacted that would terminate DIC only for widows who remarry prior to age 55. Then, when that remarriage is terminated because of death or divorce, DIC would be reinstated. This recommendation is justified for many reasons that have been previously identified by other witnesses before this committee. So, I will not take more of your time to duplicate those testimonies.

Now Mr. Chairman, I will comment on your three proposals shown below:

• Provide for the reinstatement for an unremarried surviving spouse whose disqualifying marriage was of only short duration (one or two years).

• Provide for the payment of a special death gratuity for unremarried surviving spouses of veterans whose deaths resulted from service-connected disabilities in a monthly amount equal to the new base of DIC ($750), subject to an offset for each dollar of outside income received. Also, permit surviving spouses of veterans who received non-service-connected pensions to be reinstated on the death pension roles.

• Provide for the reinstatement of VA benefits to an unremarried surviving spouse, but at one-third or one-half of the normal benefit rate.

In the **first proposal**, reinstatement would be allowed based upon an arbitrarily established length of marriage. This establishes a benefit for a very small class of widows and may have the detrimental effect of discouraging long-term marriage. AFSA **strongly opposes** this proposal.

The **second proposal** would establish a means test. DIC is a survivor benefit program that should not be subject to income requirements. This alternative would maintain discrimination against military widows because other survivor benefit plans do not contain a means test. AFSA **strongly opposes** the second proposal.

The **third proposal** would be a last resort, only if or when it has been determined impossible to eliminate the discrimination by providing full DIC. These widows have sacrificed and contributed more to our nation's servants than any other group of widows and **deserve nothing less than full DIC benefits.**

Veterans' Appeals Improvement

AFSA wholeheartedly agrees that improvements are urgently needed to improve and expedite appeal procedures relating to claims for VA benefits. After reviewing the draft legislation, we have concluded that Secretary Brown has submitted a comprehensive proposal and we generally support the bill. However, before the bill is

reported to the House by the full committee, we recommend corrections to Sections 3, 4, 7 and 10.

• In Section 3, the rights of the veterans may be jeopardized by giving the chairman too much authority.

• Section 4 would place an inordinate burden upon the veterans in the appeal process. As a result, it may often require professional legal assistance and, subsequently, become too costly for many veterans to state their case adequately.

• AFSA opposes Section 7, because it would eliminate the requirement to use independent medical opinions on complex or controversial medical issues. Veterans must continue to have the benefit of medical opinions by licensed and practicing medical specialists who are not directly or indirectly employed by the VA.

• AFSA disagrees with that portion of Section 10 that limits awards based upon differing opinions. The effective date of the award should be the date the veteran filed the claim. No veteran should be financially penalized by an erroneous decision within the VA.

In closing, Mr. Chairman, thank you for considering AFSA's views as you continue your concentrated efforts on behalf of our nation's veterans and their widows.

TESTIMONY BY
THE MARINE CORPS LEAGUE, INC.
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
THE COMMITTEE ON VETERANS' AFFAIRS
IN THE
UNITED STATES HOUSE OF REPRESENTATIVES
CANNON HOUSE OFFICE BUILDING, Room 334
13 OCTOBER 1993
in re.: HOUSE RESOLUTION 1796

SPECIAL STIPEND INCREASE
FOR RECIPIENTS OF
THE CONGRESSIONAL MEDAL OF HONOR

Mr. Chairman and members of the Subcommittee; we are greatly pleased to submit this prepared testimony authenticating our unanimous support for this legislation on behalf of our 38,000 members nationally, of whom thirty-two (32) are living recipients of this, the highest award that this Nation bestows for exceptional bravery **above and beyond the call of duty.** A copy of the accordantly adopted resolution enacted at our 70th National Convention two months ago is appended to this statement.

This legislation, initially co-introduced by the Hon. Floyd Spence of South Carolina and the Hon. Michael McNulty of New York, has strong bipartisan support, with sixty-six (66) co-sponsors having joined this endeavor. In the United States Senate, Senate Bill 1437 has been co-introduced on a bipartisan footing by Senator Robert Dole of Kansas and Senator Frank Lautenberg of New Jersey.

Personally, I have been highly honored to have made the acquaintance of and become good friends with a small number of these heroes. One, an Army recipient served as best man for this old Marine when my wife and I were married six and one-half years ago. To spend time in their company is a rare and distinct honor few of us ordinary veterans have the great privilege to enjoy. It soon becomes obvious that these uncommon, quiet and reserved men **will not seek assistance of <u>any kind</u>**; they make no attempt to stand out in the crowd, nor do they speak of their importance; yet they are proud, soft-spoken and among the gentlest men one could ever encounter, despite the certainty that they have looked into the jaws of death and did not blink.

These heroes are constantly in demand as public speakers before veterans' organizations, in schools, colleges and universities; and every known civic and fraternal organization in the country, often at **their own expense**, which many can ill afford. As a group, who better can serve as an illustration to American youth, exemplifying the ultimate in patriotism and devotion to Service, Country and The Almighty than these heroes? Indeed, who in our veteran community of 29 million plus rightly deserves this modest increase more? Despite the reality that they have, by their valor, already contributed more than we have the right to ask; this elite company of wartime heroes still serves every day; again and again representing our Nation throughout the world.

Their heroism was certainly not their intent; it was thrust upon them in a time of utmost necessity and incidents well beyond their capability to master.

As National Legislative Officer for the Marine Corps League, I implore this panel to favorably move this vitally needed and long overdue legislation on to the full Committee on Veterans' Affairs and advocate for its early and overwhelming passage in the U. S. House of Representatives, sending a clear and resonant message to these heroes that their sacrifice, fearlessness and dedication to the ideals of the American Creed has been acknowledged by means of the increase in the special pension apportioned to these heroes will be belatedly ratified.

Thank you for the opportunity to make known the views of our organization, members of whom all served with the oldest United States military service.

Submitted by:

Paul L. Sutton,
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IN NATIONAL CONVENTION ASSEMBLED
70TH NATIONAL CONVENTION
MARINE CORPS LEAGUE, INC.
20 AUGUST 1993
ORLANDO, FLORIDA

RESOLUTION No. 93-CMHRES-006

VETERANS' AFFAIRS: PENSION INCREASE - CONGRESSIONAL MEDAL OF HONOR RECIPIENTS

WHEREAS; The Congressional Medal of Honor is this nation's highest military award which is bestowed only on those few individuals who distinguished themselves conspicuously by their courage and gallantry **above and beyond the call of duty**; and,

WHEREAS; Section 1562, Title 38, United States Code, provides that the Secretary of Veterans' Affairs shall pay monthly to each person whose name has been entered on the ARMY, NAVY, AIR FORCE and COAST GUARD **HONOR ROLL** a special pension of $200.00; and,

WHEREAS; the enactment of P.L. 95-479, on 18 October 1978, increased this special pension for Congressional Medal of Honor recipients from $100.00 to $200.00 monthly; and,

WHEREAS; other Federal pension programs over the ensuing 15 years have received periodic cost-of-living adjustments of more than 200% due to inflation; and,

WHEREAS; these 204 living heroes (40 of whom live at or near the level of poverty) have not had the benefit of automatic cost-of-living raises over the past 15 years, an inequity that is long overdue in being addressed;

BE IT NOW, THEREFORE, UNANIMOUSLY RESOLVED BY the Marine Corps League, Inc., at its 70th National Convention in Orlando Florida, on 20 August 1993, that swift passage of House Resolution 1796 and Senate Bill 1437 to increase this special pension from $200.00 monthly to $500.00 monthly is absolutely supported in amending Section 1562, Title 38, United States Code allowing for this increase to be paid these 204 heroes who earned the Congressional Medal of Honor.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

CONGRESSMAN BILIRAKIS TO DEPARTMENT OF VETERANS AFFAIRS

QUESTIONS SUBMITTED BY HONORABLE MICHAEL BILIRAKIS ON BEHALF OF HONORABLE CHRIS SMITH

1) Under current law, a veteran may have legal counsel during the initial appeals process; however, no legal fees may be charged until the Board of Veterans' Appeals makes its ruling. After this stage, the attorney can bill the veteran for legal assistance as the appeal continues.

Do you believe that the provisions of the Veterans' Judicial Review Act relating to attorney fees for representation before the VA need to be amended?

2) Should a veteran have the right to paid legal counsel during his or her entire appeal?

3) Should Congress retain the current fee prohibition to protect veterans from unnecessary expenses?

The three questions posed all involve the larger issue of whether the provisions of the Veterans' Judicial Review Act (VJRA) relating to attorney fees for representation before VA need to be amended. As the questions are closely interrelated, I have taken the liberty of providing a single response which addresses each of the questions presented.

Under 38 U.S.C. § 5904(c)(2), the Board of Veterans' Appeals (BVA or Board) has responsibility for review of fee agreements for services concerning proceedings for veterans' benefits before the Department of Veterans Affairs (VA). The Secretary of Veterans Affairs is also authorized, under 38 U.S.C. § 5904(d), to direct that payment of an attorney's fee be made out of an award of past-due benefits. Currently, the Board also decides whether the requirements for such payment under 38 U.S.C. § 5904(d) have been met in cases involving representation before VA.

The fee structure created by the VJRA is complex and, therefore, difficult to administer. One proposal, as suggested by question 2, is to permit attorney involvement after the initial claim has been denied by the originating agency. This would eliminate any fee obligation in those claims that are allowed without the need for attorney involvement, and, at the same time, greatly reduce the apparent uncertainty among attorneys and claimants concerning whether a fee may legally be charged in a given case. It would also greatly reduce the administrative complexity of reviewing fee agreements.

DEPARTMENT OF VETERANS AFFAIRS
Chairman, Board of Veterans' Appeals
Washington DC 20420

JAN 18 1994

JAN 25 1994

The Honorable Jim Slattery, Chairman
Subcommittee on Compensation, Pension, and Insurance
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to respond to your question at the Subcommittee's hearing on October 13, 1993 concerning ways to reduce the average response time of the Board of Veterans' Appeals.

During my appearance at that hearing, I told you that the Board's average response time in fiscal year (FY) 1993 was 466 days, nearly double the 240-day average response time of FY 1992. I estimated that, if all else remains constant, response time will increase to 725 days in FY 1994, and 945 days in FY 1995. However, I noted that, if the Congress adopted the Administration's proposal to permit single-member (as opposed to three-member panel) decisions, the estimated FY 1995 response time could be reduced to 662 days.

You asked me for a plan to reduce the average response time to 240 days by the end of your tour on the Committee--the end of 1994. Frankly, I do not believe that it will be feasible to achieve this goal by that time. However, with the increased productivity resulting from single-member decisions and with substantial increases in Board personnel--273 new full-time employees--it is my judgment that a 240-day response time could be achieved by the end of FY 1997.

I have enclosed a detailed explanation.

I share your desire, Mr. Chairman, to reduce the time a claimant must wait before an appeal is decided. As you correctly pointed out at the October hearing, justice delayed is justice denied. I look forward to working with you and your staff on this and other important issues.

Sincerely,

Charles L. Cragin

Enclosure

Achieving a 240-Day Response Time at the Board of Veterans' Appeals

Summary The Board of Veterans' Appeals can achieve a 240 day response time by the end of FY 1997 through a combination of the use of single member decisions and adding 273 FTE (104 in FY 1995, 100 in FY 1996 and 69 in FY 1997), a staff increase of 61% over current totals.

Assumptions
1. Appeals received remains constant at 39,000 per year.
2. The number of decisions per FTE increases to 69.14 in FY 1995 (based on one signature decision legislation).
3. Funds are available to increase BVA staff levels.

Discussion From a logistical point of view, the Board's average response time is a function of the number of appeals received and the number (and average productivity) of the Board's employees. Assuming a constant number of appeals, adding approximately 100 new employees per year can reduce the Board's average response time to the 1992 level of 240 days. The precise numbers are set forth on the table below.

We note that increasing Board staff at a higher rate is not feasible because the new staff could not be absorbed and made productive. Moreover, even with the numbers estimated in the three-year window, there will be significant problems faced by BVA. The massive training effort and logistical problems (space, computer support, organization and supervision) would be substantial.

Adding the large number of new employees to decrease response time rapidly increases decision capability. As shown on the attached spreadsheet, employment levels can decrease rapidly in the fourth year and maintain a 240-day response time. Indeed, if the number of appeals received remained constant (i.e., 39,000 per year), the Board's employment level would have to decrease or eventually there would not be enough work for the capacity of the Board.

The additional FTE would be categorized as Administrative or Professional, and sub-categorized in Professional as Board Members, Counsel or Support.

	Prof.			Admin.	Total	+ or -
	Bd Mem.	Counsel	Support			
FY 94	64	175	63	144	446	
FY 95	82	231	79	158	550	+104
FY 96	98	278	94	180	650	+100
FY 97	110	309	106	194	719	+69
FY 98	95	271	92	167	625	-94
FY 99	90	257	88	154	589	-36

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